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U.S. Department of Justice  
Office of the Attorney General

# Annual Report of The Attorney General of The United States 1981



# 1981

**Annual Report  
of the  
Attorney General  
of the  
United States**



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**Office of the Attorney General**  
**Washington, D. C. 20530**

To the Senate and House of Representatives of the United States of America in Congress assembled:

This transmittal letter for the Department of Justice annual report is of necessity different from most such documents.

It must be noted at the outset that Administrations changed during Fiscal Year 1981.

While the Report's various chapters will discuss year-long activities and statistics, I am able to personally report only on those events that began after the Reagan Administration took office on January 20.

This summary is somewhat different in another sense as well.

Most annual reports begin with digests of cases, workloads, personnel, and budgets.

But I believe that something more substantive than a ledger-book approach should be followed by those giving Congress an accounting of the stewardship of important government activities.

Because of that, I want to point out the important new *policies* and *programs* that the Reagan Administration has created to reduce crime and to make the functioning of our legal system fairer,

more effective, and closer to what the Founding Fathers called for in the Constitution.

**New Priorities**

Many new priorities have been developed at the Justice Department since President Reagan took office.

They include:

—Initiatives to fight violent crime and other major offenses.

—Greater assistance for state and local enforcement agencies.

—Creation of a rational antitrust policy.

—Development of civil rights policies that are more fair and effective.

—Well researched and scholarly proposals for greater restraint by the courts.

—Steps to strengthen our intelligence agencies and thus enhance national security.

Let me begin this report with a discussion of the urgent problem on which I began working as soon

as I took office and which has continued to be one of my major priorities—the reduction of violent crime.

### **Task Force**

On March 5, 1981, I announced the appointment of the Attorney General's Task Force on Violent Crime.

Violent crime has reached shocking, alarming proportions and the widespread fact of major crime raises the serious question of whether the Federal government has done enough over the years to meet its basic obligation to ensure domestic tranquility.

The Task Force was asked to develop what was in effect an emergency schedule—to look at the crime

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***The widespread fact of major crime raises the serious question of whether the Federal government has done enough over the years to meet its basic obligation to ensure domestic tranquility.***

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problem, to hold hearings throughout the country, and to make practical recommendations on what meaningful steps could be taken.

And all of this to be done in a very short time.

Beginning in May, the Task Force held hearings in seven major cities to receive the advice of a variety of Federal, state, and local officials on how to combat violent crime.

By August, the Task Force had completed its work and submitted an exhaustive set of proposals to me.

My study of the recommendations began promptly. I have already ordered implementation of a number of key proposals. Others are still under review within the Department.

Our efforts to combat crime are far-reaching.

I have directed all United States Attorneys to

create Law Enforcement Coordinating Committees—a Committee for each Federal judicial district, a network of committees covering the entire Nation.

After consulting with appropriate state, local, and Federal officials, each U.S. Attorney will develop a specific plan for the most effective use of Federal resources against the worst crime problems in his district.

The priorities are to be against violent crime and narcotics offenses and trafficking. And there is to be full involvement of state and local police and prosecutors, including the sharing of intelligence and key personnel.

In addition, I have directed the U.S. Attorneys to work diligently to create or improve existing programs for cross-designation of prosecutors.

Heavy emphasis is placed by the Department on the attack against organized crime and white-collar crime—which often are intertwined and which, with their frequent involvement in narcotics trafficking, can contribute so heavily to violent street crime.

In a period when maximum value must be extracted from the public's tax dollars, we have instituted a number of important efforts to sharply reduce waste and fraud in government programs.

Our new strategies include a policy statement on roles of the Inspectors General in the government

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and the Federal Bureau of Investigation, fuller coordination among all enforcement personnel, design of a new Fraud and Corruption Tracking



System in the Criminal Division, a nationwide program to combat food stamp fraud, and Criminal Division assistance to local prosecutors in at least 30 states to reduce food stamp offenses.

Most violent crimes are state and local enforcement responsibilities but there are a number of ways that the Federal government can make an important impact.

### **Corrections Clearinghouse**

Many states and localities face critical shortages of prison and jail space for offenders. To help solve this problem, the government created a clearinghouse to help find surplus Federal property that might go to states and localities for use as corrections facilities. A joint program by the General Services Administration and the Department of Justice is expected to produce major results. Two states have received former Air Force stations, and efforts are underway to help 14 other states acquire Federal property.

Since it can often take several years and large sums to build new prisons, this approach offers the hope of making new facilities available in a fraction of the time and at a much lower cost.

We have fully recognized, in our efforts against violent crime, the lethal role of firearms in large numbers of offenses. As a result, the Administration has urged that prison terms be mandatory for persons carrying a firearm in commission of a felony. It is the quickest, most effective step that could be taken against those who use firearms to commit crimes.

Other important changes in criminal law also have been strongly supported or initiated by the Administration.

We have urged a reasonable change in the exclusionary rule, to correct an imbalance in the criminal justice system now weighted against the rights of society.

Bail procedures must be reformed. It is essential to protect society against those offenders who are

shown to be dangerous. It is essential that realistic bail practices govern in those cases where the accused offenders—and they include major narcotics traffickers—would seem to have no reluctance to flee after posting what for them would be bail viewed simply as an operating expense.

Those who are often forgotten in the criminal justice process—the victims—must be given help. And Justice is in the forefront of Administration efforts to find suitable ways to assist them.

As is apparent by now, there is a thread that runs through most if not all of the enforcement matters that I have mentioned.

It is the trafficking in narcotics.

It is the single worst problem to confront the Nation's law enforcement system.

It is the single largest catalyst for violent crime—as those who use narcotics commit an incredible

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***Trafficking in narcotics is the single  
worst problem to confront the  
Nation's law enforcement system . . .  
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array and number of offenses to get money to buy drugs.

We have developed, in turn, an array of new efforts to throttle the traffic in narcotics.

The most important steps involve:

—Reorganization of the Drug Enforcement Administration (DEA).

—For the first time in our history, a major role for the Federal Bureau of Investigation in the fight against drugs.

—The unprecedented—and vitally important—role by the United States Navy in furnishing information to civilian law enforcement agencies about suspected drug trafficking.

## DEA Reorganization

The reorganization of DEA that I have instituted will make it much more effective in reducing the flow of drugs into the country.

Over the years, as the narcotics problem grew in scope and seriousness, there was never a major, formal role for the Federal Bureau of Investigation. It is an asset that can no longer be held back from this priority enforcement effort—if, indeed, it ever should have been held back.

At the same time, another invaluable weapon has been added to our anti-narcotics forces with the inclusion, for the first time, of the military in certain aspects of our enforcement efforts.

The Armed Forces are furnishing information to civilian law enforcement agencies from radar sightings and intelligence programs on suspected narcotics traffickers heading toward our coastlines by sea or air.

This type of information—from vessels at sea and aircraft patrolling offshore—fills a gap that until now has badly hampered efforts to disrupt narcotics trafficking.

With this help from the Armed Forces—aid for law enforcement but not a law enforcement role by the military—we feel there can be a profound impact on trafficking along the gulf and east coasts.

The proposal to enlist the aid of the military was initially made by the Violent Crime Task Force. At about the same time, members of Congress proposed changes to the Posse Comitatus Act that would permit the Defense Department to assist law enforcement agencies. President Reagan signed amendments to the bill late in 1981.

In another major development late in the year, President Reagan endorsed the creation of a Cabinet-level, interagency committee to coordinate all domestic and international activities in the narcotics enforcement field.

The attack on the narcotics problem is being made with the utmost seriousness. As I have said repeatedly since coming to the Justice Department, the single most important set of law enforcement

problems confronting all levels of government is violent crime and the narcotics traffic at the root of so much violent crime.

The sad fact is that the Nation has for years, for decades, been losing the battle against these horrors. The Nation cannot lose the war—and we do not intend to lose.

We do not view crime as an intractable problem. We do not regard other problems that have existed for years as being incapable of solution.

## Illegal Immigration

President Reagan also moved promptly to deal with yet another of those major, growing difficulties—illegal immigration.

The President established a Cabinet-level task force that conducted an in-depth review of all significant aspects of the illegal alien and immigration

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### ***The United States must regain control over its borders.***

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problems. And the Task Force made a series of proposals that resulted in submission to the Congress of immigration reform legislation designed to solve every major facet of this long-neglected crisis.

The legislation calls for these major efforts:

—Significantly increase the enforcement resources of the Immigration and Naturalization Service so it can sharply reduce the number of undocumented aliens entering the country.

—Reform procedures so that persons who come to this country illegally can be sent back to their countries of origin promptly.

—Make it illegal for employers to knowingly hire illegal aliens, thus shutting down the magnet of easily-available jobs that draws most illegal aliens to this country.

—From humanitarian motives, enable most illegal aliens who have been in the United States for an

appreciable period of time, and who have been law abiding, to obtain a legal status.

These steps are necessary to allow the United States to regain control over its borders.

At the same time, the Administration has worked diligently to develop more effective programs within current budget and personnel limits to reduce the flow of illegal aliens.

One of the most pressing immigration problems facing the new Administration in January was the large and growing number of illegal aliens traveling from Haiti to Florida by boat.

The United States reached an agreement with the Government of Haiti for a U.S. Coast Guard cutter to patrol the sea off Haiti in an effort to reduce the flow of boats carrying illegal aliens, especially boats operated by professional smugglers.

The patrols began in October of 1981, and the number of illegal aliens dropped off sharply compared to a year earlier.

No program can be effective or produce benefits for the American people unless it is based on sound policy considerations.

### **Judicial Restraint**

That is why I have given major attention to what I define as one of my major responsibilities—encouraging the Federal courts to exercise self-restraint in their decisions.

Since it is an effort that touches on many of the Department's litigation efforts, a summary of our thinking on this important issue is relevant in this recapitulation of the Department's priority efforts since January 20.

It is essential to note, first of all, what our proposal does not contain. It does not suggest any injection of politics into the operation of the courts. It does not suggest any intrusion on the independence of the judiciary.

Rather, we feel that the independence of the courts would be strengthened by greater judicial restraint.

At the root of our thinking is the deep concern

that the courts must return to neutral principles based upon the Constitution—instead of a judge's random desire to reach a particular result.

Judicial restraint would not only mean greater independence for the courts; it also would foster greater respect for their pivotal role in our society. And it would mean protection from politicization.

Surely the greatest risk for political taint of the courts would come in their following the path of

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***We will support appointment of  
Federal judges who understand the  
limited nature of the judicial role.***

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unrestrained intrusion into what is properly the domain of the states and the elected branches of government.

After all, policymaking was committed by the Constitution to the elected representatives. It was not given to the courts.

Legislators are more accountable to the electorate than unelected judges. Legislatures have greater fact-finding capabilities than judges.

Encouraging courts to stay within their proper bounds will promote the constitutional values of separation of powers and federalism.

We will support appointment of Federal judges who understand the limited nature of the judicial role.

The Justice Department will select cases and appeals related to promoting judicial self-restraint.

As I have said repeatedly, we will urge courts to accept only those cases brought by litigants with a specific injury which can be redressed by the court. Generalized grievances are the subject of policymaking and should be presented to legislatures.

Courts should show appropriate deference in reviewing the constitutionality of state and Federal laws. Courts may not, under the guise of constitutional review, simply substitute their policy choices



for those of the elected representatives of the people.

And we will urge courts to avoid intruding into state functions, such as running prisons and schools. Courts have no expertise in these areas and, when shaping remedial orders, should scrupulously avoid intruding upon the responsibilities of state officials.

This is an area that is near the heart of our government.

Our system functions effectively only when the separation of powers as defined by the Founding Fathers is a fact of life in our daily work—day in, day out.

### **Fundamental Ideals**

New policies have also been developed in other key aspects of our litigating responsibilities.

We fully recognize and support the fundamental ideals of race and sex neutrality in the constitutional and statutory guarantees of civil rights.

We have taken an important new step and developed remedial policies in school desegregation and employment discrimination that we feel are more fair and more effective.

In school cases, we have two major objectives:

—First, to eliminate state-imposed racial barriers to open enrollment in the public schools.

—Second, to make certain that states provide equal educational opportunities to all public school students.

We will propose remedies to bring about desegregation.

But we will not seek student assignment plans requiring busing of students outside their neighborhoods.

Instead, our proposed relief will involve such remedial techniques as voluntary student transfer programs, magnet school programs, and modest adjustments of zone lines.

In the employment discrimination area, we firmly believe that the Constitution and the laws protect the right of every person to pursue employment

goals in an environment of racial and sexual neutrality.

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***This Administration's civil rights policies will bring significant progress without being divisive. They will uphold the law and our Constitution.***

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But the Justice Department will no longer follow earlier practices of seeking, as relief in job discrimination cases, mandatory hiring goals to benefit all members of a minority class. Such goals were without regard to whether the individuals who would benefit had in fact been victims of discriminatory practices by the employer.

Our approach is different. It is much fairer. And we believe it will have greater practical results for the country.

We will not insist on quotas or goals that give non-victims preferential treatment.

What we will insist on—and will pursue with great diligence—is relief that will fully redress the grievances of those who suffered injury as a result of an employer's discrimination.

Three steps will be followed in these cases:

—First, we will seek affirmative relief for each specific victim.

—Second, we will insist upon enhanced recruitment efforts by the employer directed at the groups that were disadvantaged, so that more minorities and women are brought into the employer's pool of qualified applicants.

—Third, we will pursue injunctions for nondiscrimination in the future.

These steps will bring significant progress without being divisive. They will uphold the law and our Constitution.

Another important area where we have developed new enforcement policies is in antitrust.

## **Tough-Minded Enforcement**

The focus of our priorities is on activities that are truly anti-competitive. We will not waste precious resources, and neglect the major public concerns, by pursuing outmoded theories.

We view antitrust enforcement as being extremely important. We believe in tough-minded enforcement that takes into account the Nation's complex free-enterprise system.

The central focus of the antitrust laws is on cartel-type behavior. Our practice has been strict enforcement. To give as broad a view as possible, let me cite the 60 cases that were started by the Antitrust Division between January 20 and December 1, 1981. They included 49 criminal cases.

But at the same time, business ventures will not be attacked solely because the companies involved are large. And we will not interfere with joint ventures, efficient distribution methods, or mergers that pose no real risk of being cartel-type behavior.

We look upon the antitrust laws as helping to make our economic system operate more efficiently—to enhance competition, to benefit the consumer.

Among other actions during the latter half of fiscal 1981, the Division began to formulate new guidelines that will give business firms better guidance on which mergers would be challenged.

Development of new policies also extended into the national security field.

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***We have insisted on quality—quality in the development of new policies, quality in crafting new programs, quality in the decisions we make and in the construction of our cases.***

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The Department had a significant role in the development of President Reagan's important executive order on intelligence that clarifies the authorities, responsibilities, and limitations concerning intelligence agencies.

Our goals in this work are not mutually exclusive. On the one hand, we are working to improve the effectiveness of our intelligence agencies. On the other hand, we strive in that work to uphold the rights of all Americans.

The safeguards that have been erected will strengthen public confidence—and will not impair legitimate efforts to protect our country from hostile forces.

## **Intelligence Agents**

At the same time, we worked hard for passage of legislation that would impose criminal penalties on persons who expose the classified identities of intelligence agents.

And we have proposed badly-needed amendments to the Freedom of Information Act. We are firmly committed to the implementation of the Act. But we also have been deeply concerned that there have been instances when the Act was being used in ways that Congress never intended.

One of the things that we have insisted upon at the Department of Justice since January 20 is quality—quality in the development of new policies, quality in crafting new programs, quality in the decisions we make and in the construction of our cases.

And an insistence upon quality in those selected for positions of public trust. Nowhere is that standard more evident than in President Reagan's selection of Sandra O'Connor to be the first woman nominated to the Supreme Court. It was a judgment in which the Senate, by its 99-0 confirmation vote, heartily concurred.

I am personally fortunate in having at the Justice Department a team of unexcelled ability.

Edward C. Schmults, the Deputy Attorney General, is a skilled attorney with a wealth of experience

in high Federal positions. He is my deputy in every sense of the word—a full participant in the decision-making process on every decision of substance that is made in the Department.

I also am fortunate in having Rudolph W. Giuliani to serve as the Associate Attorney General, the No. 3 position in Justice. As long-time Federal prosecutor, he brings a rare dimension to his work of supervising criminal enforcement activities on a day-to-day basis.

Finally, no accounting of the Department's work would be complete without a special mention of the career personnel of Justice, whose work is so vital to

the Nation's well-being.

In this brief summary, I have distilled some of the key elements of some of the programs we have developed and the policies we have initiated.

We seek to do everything within our power to reduce crime and substantially enhance the level of safety for all Americans.

Through cooperation with many other agencies, we work to improve the national security.

We work to uphold the rule of law and the Constitution.

In every effort we begin, we seek fairness and justice.

Respectfully submitted,

A handwritten signature in black ink, reading "William French Smith". The signature is written in a cursive, flowing style with a prominent initial "W".

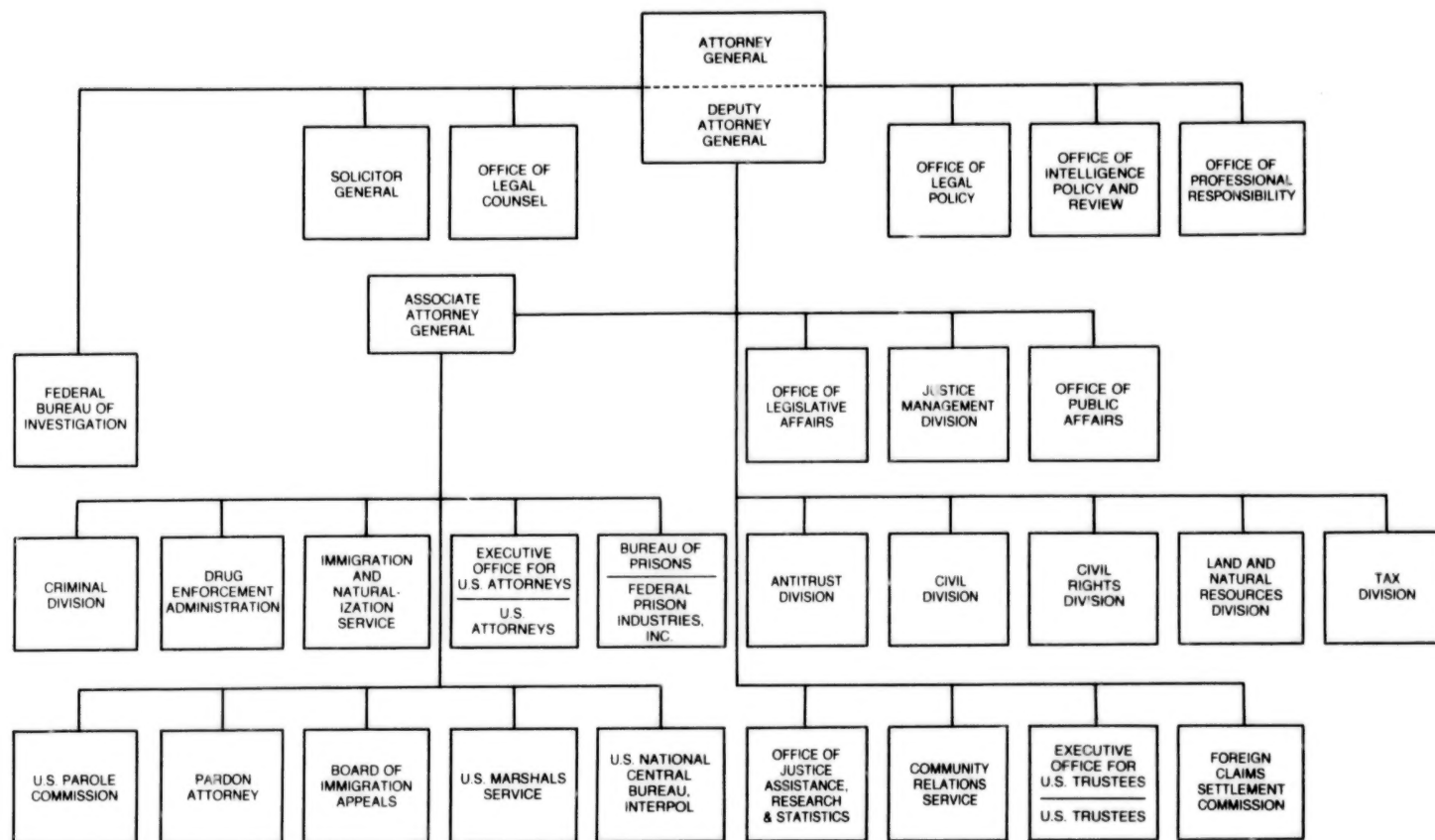
William French Smith  
Attorney General



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# Office of the Solicitor General

**Rex E. Lee**  
**Solicitor General**

The Solicitor General, with the assistance of a small staff of attorneys, is responsible for conducting and supervising all aspects of government litigation in the Supreme Court of the United States. In addition, the Solicitor General reviews every case litigated by the federal government that a lower court has decided against the United States, to determine whether to appeal, and also decides whether the United States should file a brief as *amicus curiae* (friend of the court) in any appellate court.

A significant part of the work of the Office involves government agencies that have conducted lower court litigation themselves such as the National Labor Relations Board and the Securities and Exchange Commission. In addition, many cases arise from activities of executive departments of the government.

During the past term of the Supreme Court (July 2, 1980 to July 2, 1981), the Office handled 1,999 cases, 39 percent of the 5,144 cases on the Court's docket [Table I]. Of the 4,360 cases acted on during the term, there were 1,525 in which the government appeared as the respondent, 69 petitions for writs of *certiorari* (asking the Court to consider a case) filed or supported by the government and 19 cases in which it appeared as *amicus curiae* supporting the respondent [Table II-A]. During the same period, the Court acted upon 14 appeals filed or supported by the government and 20 cases where the Office either represented the appellee or appeared as *amicus curiae* supporting the appellee [Table II-B]. In addition, the Office participated in 10 cases on the Court's original docket [Table II-D], and two certificates docketed and acted upon [Table II-E].

Of the 4,038 petitions for writs of *certiorari* docketed and acted upon, only six percent were granted during the term. Of those filed or supported by the United States (excluding four protective petitions which were denied when the opposing petitions were likewise denied), 65 percent were granted. This reflects the careful screening of the government cases by the Solicitor General and his staff before the decision is made to file or to support a petition. Of the 14 appeals filed or supported by the government, probable jurisdiction was noted by the Court in 12 [Tables II-A and B].

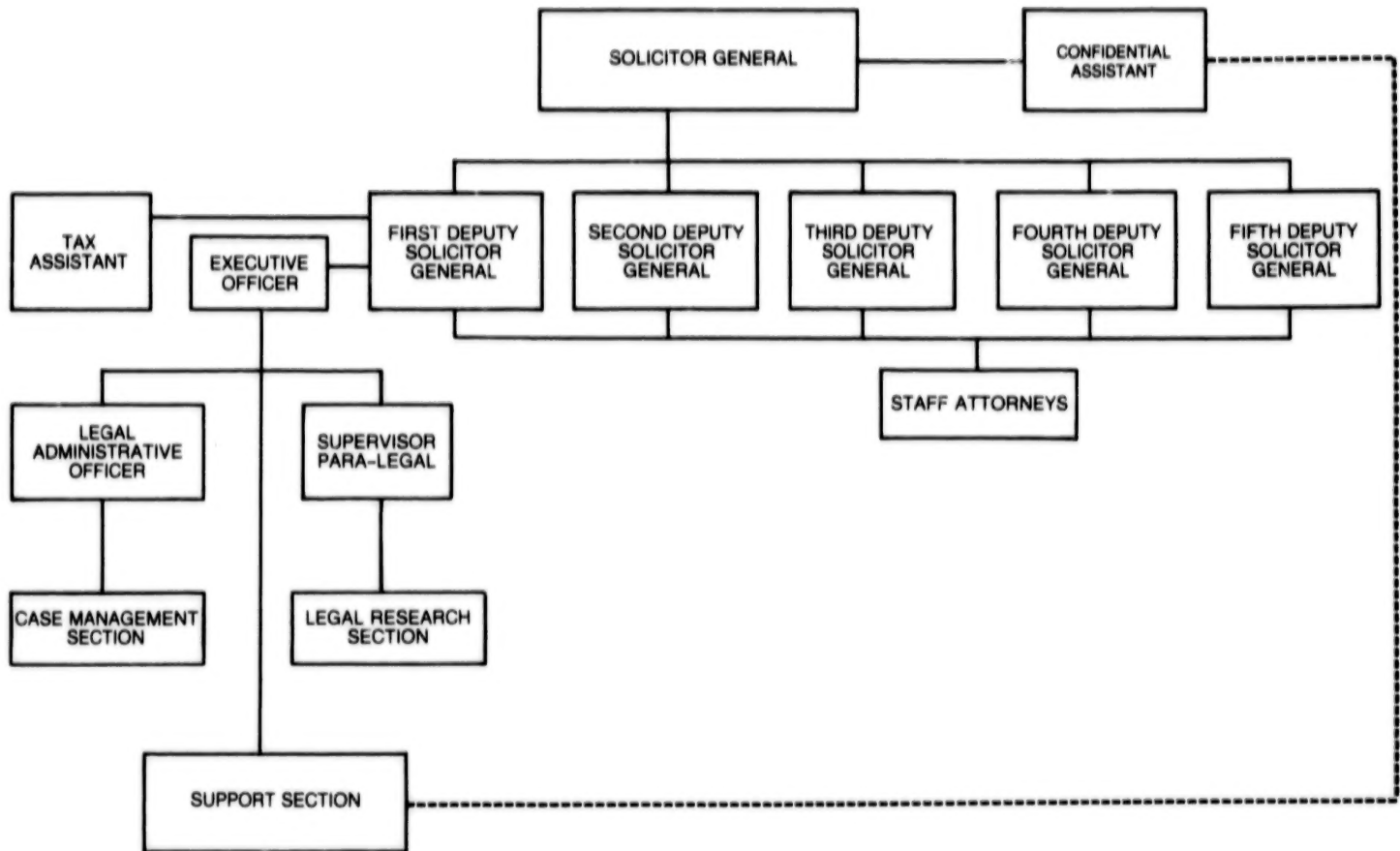
The government participated in argument or filed briefs as *amicus curiae* in 101 (66 percent) of 154 cases argued on the merits before the Supreme Court. Two of these cases were carried over for reargument in the 1981 term. Of the cases decided on the merits, with or without argument, the government participated in 128 of 277 cases, 72 percent of which were decided in favor of the government's position and three percent of which were decided partially in favor of the government's position.

During the same period, there were 602 cases in which the Solicitor General decided not to petition for *certiorari*, two cases

in which he decided not to take a direct appeal, and 1,979 cases in which the Solicitor General was called upon to decide whether to authorize taking a case to one of the courts of appeals, plus 378 miscellaneous matters. This made a total of 4,960 substantive matters the Office handled during the year.

Government cases recently handled by the Office of the Solicitor General resulted in the following decisions by the Supreme Court, among more than 70 others: 1) the President was empowered to enter into the claims settlement agreement with Iran to end the hostage crisis (*Dames & Moore v. Regan*, No. 80-2078); 2) Congress may, consistent with the Double Jeopardy Clause, authorize government appeals of sentences in a criminal case (*United States v. DiFrancesco*, No. 79-567); 3) the Federal Communications Commission may require television networks to afford reasonable air time to candidates seeking federal elective office (*CBS, Inc. v. FCC*, Nos. 80-207, 80-213 and 80-214); 4) the Surface Mining Act does not offend the Tenth Amendment or otherwise violate the Constitution (*Hodel v. Virginia Surface Mining*, No. 79-1538); 5) the Selective Service Act, which requires young men but not young women to register for potential military induction, does not unconstitutionally discriminate on the basis of gender (*Rostker v. Goldberg*, No. 80-251); 6) Congress may, consistent with the Compensation Clause, limit or eliminate statutory annual cost-of-living increases for Article III judges prior to the effective date of the increases (*United States v. Will*, Nos. 79-983 and 79-1689); 7) naturalized American citizens who served as concentration camp guards during World War II may be denaturalized as a result of their concealment of that fact (*Fedorenko v. United States*, No. 79-5602); 8) the United States may prosecute persons under the federal securities laws who engage in fraudulent pledge transactions (*Rubin v. United States*, No. 79-1013); 9) the Securities and Exchange Commission may base findings of fraud in administrative proceedings on a preponderance of the evidence, rather than on clear and convincing evidence (*Steadman v. SEC*, No. 79-1266); 10) standards for toxic substances under the Occupational Safety and Health Act may not be subjected to a cost-benefit analysis (*American Textile Manufacturers Institute v. Donovan*, Nos. 79-1429 and 79-1583); 11) the President and the Secretary of State may revoke a passport in the interests of foreign policy and national security (*Haig v. Agee*, No. 80-83); 12) federal mine inspectors may conduct routine health and safety inspections without a warrant (*Donovan v. Dewey*, No. 80-901); and 13) the Bureau of Prisons may accept contract transfer of state prisoners without a showing of specialized need for treatment (*Howe v. Smith*, No. 80-5392). In addition, the Office of the Solicitor General was successful in obtaining stays of court orders in census cases that

## Office of the Solicitor General



had prohibited the Census Bureau from certifying the results of the 1980 decennial census to the President on December 31, 1980.

The Office of the Solicitor General filed briefs as a friend of the Court in many other cases, including cases in which the Court held that: 1) the employment discrimination laws provide protection against sex-based wage discrimination, just as they do against race-based wage discrimination, even if the jobs involved are not covered by the Equal Pay Act (*County of Washington v. Gunther*, No. 80-429); 2) an employee's submission of a contractual wage claim to a grievance committee does not preclude the employee from bringing an action under the Fair Labor Standards Act based on the same events (*Barrentine v. Arkansas-Best Freight System, Inc.*, No. 79-2006); 3) the remedy of contribution is unavailable to persons who violate the federal antitrust laws (*Texas Industries, Inc. v. Radcliff Materials, Inc.*, No. 79-1144) or the employment discrimination laws (*Northwest Air-*

*lines, Inc. v. Transport Workers*, No. 79-1056); 4) jurisdictions covered by the Voting Rights Act must obtain preclearance under that Act for proposals submitted to reapportionment courts that may affect minority voting rights (*McDaniel v. Sanchez*, No. 80-180); 5) police may detain a person on reasonable suspicion short of probable cause while executing a search warrant (*Michigan v. Summers*, No. 79-1974); 6) the Clean Water Act, as amended in 1972, has supplanted the federal common law of nuisance so as to prevent a federal court from imposing more stringent effluent limitations than the statute requires, even where interstate waters are concerned (*City of Milwaukee v. State of Illinois*, No. 79-408); 7) statutory rape laws that distinguish between males and females do not violate the Equal Protection Clause (*Michael M. v. Superior Court*, No. 79-1344); and 8) the scope of a lawful search incident to arrest includes the passenger compartment of an automobile in which the arrestee was riding immediately prior to arrest (*New York v. Belton*, No. 80-328).

**TABLE I**  
**Office of the Solicitor General—Supreme Court Litigation**  
**October Term, 1980**  
**(July 2, 1980—July 2, 1981)**  
**Total Cases**

	1976		1977		1978		1979		1980	
	No.	%	No.	%	No.	%	No.	%	No.	%
1. Total number of cases on dockets .....	4829	100	4704	100	4734	100	4781	100	5144	100
a. Brought over from preceding Term .....	955	20	812	17	837	18	795	17	970	19
b. Docketed during the Term .....	3874	80	3892	83	3897	82	3986	83	4174	81
2. Disposition of cases on dockets at the Term:										
Total .....	4829	100	4704	100	4734	100	4781	100	5144	100
a. Cases acted upon and closed .....	4017	83	3867	82	3939	83	3811	78	4255	83
b. Cases acted upon but not closed .....	92	2	80	2	93	2	91	2	105	2
c. Cases docketed but not acted upon .....	720	15	757	16	702	15	879	18	784	15
3. Cases carried over to next Term .....	812	—	837	—	795	—	970	—	889	—
4. Classification of cases acted upon at the Term:										
Total .....	4109	100	3944	100	4030	100	3902	100	4360	100
a. Certiorari .....	3790	92	3664	93	3763	93	3648	93	4097	94
b. Appeals .....	260	7	195	5	187	5	170	4	178	4
c. Miscellaneous docket, original writs .....	53	1	77	2	64	2	71	2	71	2
d. Original Docket .....	6	—	8	—	16	—	13	—	12	—
e. Certifications .....	0	—	0	—	0	—	0	—	2	—
5. Cases participated in by the Government .....	2444	51	2243	48	2211	47	2023	42	1999	39
6. Cases not participated in by the Government ..	2385	49	2461	52	2523	53	2758	58	3145	61

**Table II-A**  
**Office of the Solicitor General**  
**Classification of Cases Upon Which the Supreme Court has Acted**

This does not include cases in which the Court has merely acted on application for stays,  
 extensions of time, or similar matters, or denied petition for rehearing

A PETITIONS FOR WRITS OF CERTIORARI	1976		1977		1978		1979		1980	
	No.	%	No.	%	No.	%	No.	%	No.	%
1. Total number docketed and acted upon .....	3720	100	3594	100	3715	100	3590	100	4038	100
a. Petitions filed or supported by Govt: .....	59	2	68	2	68	2	67	2	69	2
(1) Government as petitioner .....	48	2	57	2	52	2	55	2	50	2
(2) Government as <i>amicus</i> , supporting petitioner .....	11	—	11	—	16	—	12	—	19	—
b. Petitions not filed or supported by Government .....	3661	98	3526	98	3647	98	3523	98	3969	98
(1) Government as respondent .....	1880	51	1653	46	1723	46	1498	42	1525	38
(2) Government as <i>amicus</i> , supporting respondent .....	21	—	21	—	20	1	24	1	19	—
(3) No participation by Govt .....	1760	47	1852	52	1904	51	2001	56	2425	60
2. Total number of petitions granted .....	233	6	188	5	212	6	222	6	243	6
a. Petitions filed or supported by Govt: .....	45	76	40	59	49	72	53	79	42	61
(1) Government as petitioner .....	37	77	33	58	37	71	43	78	31	62
(2) Government as <i>amicus</i> , supporting petitioner .....	8	73	7	64	12	75	10	84	11	58
b. Petitions not filed or supported by Govt: .....	188	5	148	4	163	4	169	5	201	5
(1) Government as respondent .....	77	4	49	3	51	3	51	3	48	3
(2) Government as <i>amicus</i> , supporting respondent .....	8	38	10	48	14	70	11	46	2	11
(3) No participation by Government .....	103	6	89	5	98	5	107	5	151	6
3. Total number of petitions denied or dismissed .....	3465	93	3379	94	3473	93	3354	94	3773	93
a. Petitions filed or supported by Govt: .....	14	24	28	41	16	24	12	18	24	35
(1) Government as petitioner .....	11 <sup>1</sup>	23	24 <sup>1</sup>	42	12 <sup>1</sup>	23	11 <sup>1</sup>	20	18 <sup>1</sup>	36
(2) Government as <i>amicus</i> , supporting petitioner .....	3	27	4	36	4	25	1	8	6	32
b. Petitions not filed or supported by Govt: .....	3451	94	3351	95	3457	95	3342	95	3749	94
(1) Government as respondent .....	1789	96	1592	96	1664	97	1445	97	1468	96
(2) Government as <i>amicus</i> , supporting respondent .....	13	62	11	52	6	30	13	54	17	89
(3) No participation by Government .....	1649	94	1748	94	1787	94	1884	94	2264	93
4. Total number of petitions mooted or dismissed .....	22	1	27	1	30	1	14	—	22	1

<sup>1</sup>Includes protective and cross-petitions denied upon government recommendation after disposition of related cases.

NOTE: Percentages based on participation.

**Table II-B, C,  
Office of the Solicitor General  
(Cont'd)—Classification of Cases Upon Which the Supreme Court Has Acted**

	1976		1977		1978		1979		1980	
<b>B. APPEALS</b>	No.	%	No.	%	No.	%	No.	%	No.	%
1. Total number docketed and acted upon .....	232	100	180	100	162	100	153	100	165	100
a. Appeals filed or supported by Govt: .....	23	10	16	9	9	6	12	8	14	8
(1) Government as appellant .....	17	7	11	6	8	5	10	7	10	6
(2) Government as <i>amicus</i> , supporting appellant .....	6	3	5	3	1	1	2	1	4	2
b. Appeals not filed or supported by Govt: .....	209	90	164	91	153	94	141	92	151	92
(1) Government as appellee .....	26	11	16	9	12	7	15	10	18	11
(2) Government as <i>amicus</i> , supporting appellee .....	6	3	5	3	6	4	5	3	2	1
(3) No participation by Government .....	177	76	143	79	135	83	121	79	131	80
2. Total number dismissed, affirmed or reversed without argument .....	188	81	136	76	131	81	124	81	124	75
a. Appeals filed or supported by Govt: .....	14	61	10	63	3	33	3	25	2	14
(1) Government as appellant .....	12	71	8	73	3	37	3	30	2	20
(2) Government as <i>amicus</i> , supporting appellant .....	2	33	2	40	0	—	0	—	0	—
b. Appeals not filed or supported by Govt: .....	174	83	126	77	128	84	121	86	122	81
(1) Government as appellee .....	22	85	12	75	9	75	13	87	10	56
(2) Government as <i>amicus</i> , supporting appellee .....	4	67	1	20	3	50	2	40	—	—
(3) No participation by Government .....	148	84	113	79	116	86	106	88	112	85
3. Total number Jurisdiction Noted or set for argument .....	44	19	44	24	31	19	29	19	41	25
a. Appeals filed or supported by Govt: .....	9	39	6	37	6	67	9	75	12	86
(1) Government as appellant .....	5	29	3	27	5	63	7	70	8	80
(2) Government as <i>amicus</i> , supporting appellant .....	4	67	3	60	1	100	2	100	4	100
b. Appeals not filed or supported by Govt: .....	35	17	38	23	25	16	20	14	29	19
(1) Government as appellee .....	4	15	4	25	3	25	2	13	8	44
(2) Government as <i>amicus</i> , supporting appellee .....	2	33	4	80	3	50	3	60	2	100
(3) No participation by Government .....	29	16	30	21	19	14	15	12	19	15
<b>C. MISCELLANEOUS DOCKET—ORIGINAL WRITS</b>										
1. Total number of applications for original writs docketed and acted upon .....	53	100	77	100	64	100	71	100	71	100
a. Filed or supported by Government .....	0	—	0	—	0	—	0	—	0	—
(1) Government as petitioner .....	0	—	0	—	0	—	0	—	0	—
(2) Government as <i>amicus</i> , supporting petitioner .....	0	—	0	—	0	—	0	—	0	—
b. Not filed or supported by Government .....	53	100	77	100	64	100	71	100	71	100
(1) Government as respondent .....	18	34	28	36	20	31	25	35	13	18
(2) Government as <i>amicus</i> , supporting respondent .....	0	—	0	—	0	—	0	—	0	—
(3) No participation by Government .....	35	66	49	64	44	69	46	65	58	82
2. Total number decided without argument .....	53	100	77	100	64	100	71	100	71	100
a. Filed or supported by Government .....	0	—	0	—	0	—	0	—	0	—
(1) Government as petitioner .....	0	—	0	—	0	—	0	—	0	—
(2) Government as <i>amicus</i> , supporting petitioner .....	0	—	0	—	0	—	0	—	0	—
b. Not filed or supported by Government .....	53	100	77	100	64	100	71	100	71	100
(1) Government as respondent .....	18	34	28	36	20	31	25	35	13	18
(2) Government as <i>amicus</i> , supporting respondent .....	0	—	0	—	0	—	0	—	0	—
(3) No participation by Government .....	35	66	49	64	44	69	46	65	58	82
3. Total argued or set for argument .....	0	—	0	—	0	—	0	—	0	—
a. Filed or supported by Government .....	0	—	0	—	0	—	0	—	0	—
(1) Government as petitioner .....	0	—	0	—	0	—	0	—	0	—
(2) Government as <i>amicus</i> , supporting petitioner .....	0	—	0	—	0	—	0	—	0	—
b. Not filed or supported by Government .....	0	—	0	—	0	—	0	—	0	—
(1) Government as respondent .....	0	—	0	—	0	—	0	—	0	—
(2) Government as <i>amicus</i> , supporting respondent .....	0	—	0	—	0	—	0	—	0	—
(3) No participation by Government .....	0	—	0	—	0	—	0	—	0	—

Continued on next page

**Table II- D, E (Continued)**

	1976		1977		1978		1979		1980	
	No.	%	No.	%	No.	%	No.	%	No.	%
<b>D. ORIGINAL DOCKET</b>										
1. Total number acted upon .....	6	100	8	100	16	100	13	100	12	100
a. Government participating .....	3	50	4	50	10	63	9	69	10	83
b. Government not participating .....	3	50	4	50	6	37	4	31	2	17
<b>E. CERTIFICATES</b>										
1. Total number of certificates docketed and acted upon .....	0	—	0	—	0	—	0	—	2	100
a. Government participating .....	0	—	0	—	0	—	0	—	2	100
b. Government not participating .....	0	—	0	—	0	—	0	—	0	—

Percentages based on participation

**Table III**  
**Office of the Solicitor General**  
**Classification of Supreme Court Cases Argued or Decided on Merits**

	1976		1977		1978		1979		1980	
	No.	%	No.	%	No.	%	No.	%	No.	%
<b>A. ARGUED</b>										
1. All cases argued .....	176	100	164 <sup>4</sup>	100	168 <sup>4</sup>	100	156 <sup>4</sup>	100	154 <sup>4</sup>	100
2. Government participating .....	99	56	97	59	99	59	108	69	101	66
a. Government as petitioner or appellant <sup>2</sup> .....	29	29	35	36	29	29	43	40	31	31
b. Government as respondent or appellee <sup>2</sup> .....	36	36	40	41	34	34	35	32	37	36
c. Government as <i>amicus</i> <sup>3</sup> .....	34 <sup>3</sup>	35	22 <sup>3</sup>	23	36 <sup>3</sup>	37	30 <sup>3</sup>	28	33 <sup>3</sup>	33
3. Government not participating .....	77	44	67	41	69	41	48	31	53	34
<b>B. DECIDED ON MERITS WITH OR WITHOUT ARGUMENT</b>										
1. All cases decided on merits <sup>1</sup> .....	372	100	276	100	267	100	281	100	277	100
2. Government participating .....	186	50	139	50	122	46	158	56	128	46
a. Decided in favor of Government's position <sup>2</sup> .....	111	60	87	63	82	67	104	66	92	72
b. Decided against Government's position <sup>2</sup> .....	64	34	41	29	32	26	51	32	32	25
c. Not classifiable as for or against <sup>2</sup> .....	11	6	11	8	8	7	3	2	4	3
3. No participation by Government .....	186	50	137	50	145	54	123	44	149	54

<sup>1</sup>Includes cases summarily affirmed, reversed or vacated on the *In Forma Pauperis* Docket.

<sup>2</sup>Percentage is based on the total cases in which the Government participated.

<sup>3</sup>Includes cases in which the Government filed briefs as *amicus curiae* but did not participate in the argument.

<sup>4</sup>Includes cases set for reargument in succeeding terms.



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## Office of Legal Counsel

**Theodore B. Olson**  
**Assistant Attorney General**

The principal function of the Office of Legal Counsel (OLC) is to assist the Attorney General in his role as legal adviser to the President and agencies in the Executive Branch. The Office, which is headed by an Assistant Attorney General, drafts the formal opinions of the Attorney General and renders its own formal and informal opinions on a variety of legal questions involving the operations of the Executive Branch. It also serves as general counsel to the Department of Justice.

Formal Attorney General opinions are relatively few in number and ordinarily involve issues of major significance. Legal advice provided directly by OLC itself is much more frequent and diverse. During fiscal 1981, as in the past, hundreds of written OLC opinions were issued to the White House and the various departments and agencies of the government other than the Department of Justice.

Those opinions covered a wide range of legal questions, including both matters of constitutional interpretation and statutory construction, especially construction of recently-enacted laws and other laws for which judicial precedent is sparse.

The Office renders opinions and gives advice on a regular basis to components within the Department of Justice on similar topics, and in the last year OLC issued over 300 such opinions in writing.

In addition to written opinions, informal or oral legal advice was provided with frequency, both to client departments and agencies and to components of the Department of Justice. The Office is also called on to provide written opinions on proposed legislation. Numerous such opinions were rendered in fiscal 1981. In addition, all proposed executive orders and certain Presidential proclamations are reviewed by the Office as to form and legality before issuance. During the past year, the Office passed on approximately 100 of these.

The Assistant Attorney General, his deputies, and members of the staff served on a number of formally constituted interdepartmental and intradepartmental committees during the year. They included the Administrative Conference of the United States, the Administrative Committee on the Federal Register, the Interagency Information Security Committee, the Secretary of State's Advisory Committee on Private International Law, the Department Review Committee (Chairman), and the Freedom of Information Committee. Members of the Office also served on a number of interdepartmental and intradepartmental ad hoc working groups. The Office continued to provide assistance to

the President's Personal Representative for Micronesian Status Negotiations in connection with the arrangement of a new status for the Trust Territory of the Pacific Islands.

Although the Office does not conduct litigation as one of its regular functions, it is called on occasionally to: Assist with briefs; to present oral argument; and more frequently to advise and to assist other divisions of the Department in making litigation strategy judgments and in the preparation of briefs and memoranda relating to constitutional or statutory issues within the Office's areas of expertise. For instance, the Office participated extensively during fiscal 1981 in cases involving legislative vetoes and challenges to the dismissal of Executive Branch officials by the President.

In the legislative arena, the Office assisted the Attorney General, the Deputy Attorney General, the Associate Attorney General, the Office of Legal Policy, the Office of Legislative Affairs, and other Department components in preparing legislation desired by the Department.

The Office also prepared and delivered Congressional testimony on a number of matters, including legislation providing for the disapproval by concurrent or by one-House resolutions or rules and regulations issued by the Executive Branch and various regulatory reform proposals.

In addition to assisting the Attorney General, in his capacity as legal adviser to the Executive Branch, the Office serves as his general counsel with respect to Department activities. It reviews all orders and regulations submitted for the Attorney General's issuance, and provides advice with respect to his formal review of certain decisions of the Board of Immigration Appeals of the Department.

The Office's activities in fiscal 1981 included substantial participation in the process which resulted in the release of the American hostages from Iran. The Office of Legal Counsel was the architect of the legal basis for the agreements with Iran, and provided extensive assistance in the efforts of the Department of Justice to defend, in court, those agreements and related implementing actions and the Presidential authority behind them. That effort resulted in a unanimous decision by the Supreme Court in the case of *Dames & Moore v. Regan* upholding the President's actions.

The Office of Legal Counsel has also undertaken, at the direc-

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tion of the Attorney General, responsibility for publishing its legal opinions so that others in the Executive Branch and in the public can have access to them. Historically, only the formal Attorney General opinions have been published, but in recent years

there have been few such opinions while the numbers of important legal opinions issued by this Office has continued to increase. Two volumes of selected OLC opinions have been issued and a third volume will be published during fiscal 1982.

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## Office of Legislative Affairs

**Robert A. McConnell**  
**Assistant Attorney General**

The Office of Legislative Affairs (OLA) serves two primary functions. First, it helps formulate and coordinate legislative policy among the Department's offices, boards, divisions, and bureaus. Second, it maintains Department liaison with Congress and other government departments and agencies.

OLA recommends and coordinates development of the Department's legislative proposals and its positions on proposed legislation originating in Congress or referred for comment by the Office of Management and Budget.

It monitors Congressional committees for matters of interest to the Department, and provides assistance to the President's staff in formulating the Administration's bills and in seeking their approval by Congress.

OLA provides or arranges for testimony by Department witnesses at Congressional hearings and handles requests for information relating to Congressional investigations or constituent inquiries.

The volume of legislative business during the first session of the 97th Congress was substantial. OLA handled 1,290 requests for reports to Congress and the Office of Management and Budget on legislative proposals.

Department witnesses testified at 108 Congressional hearings. Responses were prepared to more than 12,000 letter inquiries from Congress, other agencies, or the public. Approximately 12,000 telephone inquiries were received from Congress and others.

Major legislative matters to which the Office devoted substantial resources during the session included:

- The proposed new Federal Criminal Code, which would provide for the first time an integrated compendium of virtually all federal statutes and rules concerning crimes, the criminal justice process, and related matters.
- A "court improvement package," which would create a new court of appeals for the Federal Circuit and provide for various significant justice system improvements of a house-keeping nature.

- An "Intelligence Identities Protection Act," creating penalties for intentionally identifying a covert intelligence agent.
- Amendments to the False Claims Act to facilitate the Department's efforts, through litigation, to deal with the growing problems posed by fraud and corruption in the government procurement process.
- A "Program Fraud Civil Penalties Act," which would provide an administrative alternative to judicial proceedings in smaller cases involving fraud against the government.
- Regulatory reform legislation.
- "Tax Disclosure Amendments," which would facilitate federal law enforcement access to tax information in nontax criminal cases by clarifying ambiguities in existing law, streamlining disclosure procedures, and making appropriate distinctions between privacy rights of organizations and those of natural persons.
- Amendments to the Tort Claims Act to 1) insulate federal employees from liability for actions taken in the scope of their employment, and 2) waive federal sovereign immunity for constitutional torts.
- Comprehensive legislation to strengthen the refugee and immigration policy of the United States.
- Development of a proposal concerning the establishment of seabed boundaries. The proposal would authorize the Attorney General, with the concurrence of interested agency heads, to negotiate with coastal states in the establishment of their offshore boundaries. This would preclude the resolving of such matters by litigation.
- Legislative changes to modify the exclusionary evidence rule to allow "good faith" assertions by police officers, which, if sustained by the courts, would permit admission of evidence now excluded.
- Revised bail reform laws which would allow the courts to consider dangerousness to the community as a factor in determining bail.

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## Office of Legal Policy

**Jonathan C. Rose**  
**Assistant Attorney General**

The Office of Legal Policy (OLP) was created by an order of Attorney General William French Smith on May 26, 1981, to serve as the principal policy staff reporting to the Attorney General and Deputy Attorney General.

Under the direction of an Assistant Attorney General, the Office plans, develops, and coordinates the implementation of policy on issues that are of special concern to the Attorney General and the Administration.

When appropriate, the Office coordinates and reviews the policy positions advanced by component organizations of the Department to ensure that a coherent policy consistent with the overall goals of the Attorney General and the Administration exists. In carrying out its responsibilities, OLP is authorized to call upon the relevant departmental units for personnel and other assistance.

OLP also advises and assists the Attorney General in the selection and appointment of federal judges. It administers the Federal Justice Research Program, which provides grants for legal research programs of special interest to the Attorney General. OLP participates, as appropriate, in internal budget hearings of the Department to advise on the policy implications of resource allocations. OLP assists the Attorney General and Deputy Attorney General in fulfilling the responsibilities of the Federal Legal

Council to promote coordination among the chief legal officers in the federal government.

OLP represents the Department of Justice in the Administrative Conference of the United States. In addition, a subsidiary office of OLP, the Office of Information and Privacy, manages and coordinates departmental responsibilities related to the Freedom of Information Act and the Privacy Act—including the coordination and implementation of policy development and compliance within Executive Branch agencies and departmental units.

OLP has represented the Department before Congress and within the Administration on a broad range of issues—including legislative proposals relating to criminal law, regulatory reform, foreign corrupt practices, foreign investment in the United States, telecommunications and the courts.

OLP's projects included the preparation of comprehensive revisions of the Freedom of Information Act, designed to address the problems with the Act that have arisen since it was amended in 1974. This proposal was introduced in Congress on behalf of the Administration in October 1981, and was pending before the relevant committees at the end of the fiscal year. OLP has also carried forward the Department's efforts to seek enactment of a comprehensive new Federal Criminal Code.

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## Office of Professional Responsibility

**Michael E. Shaheen, Jr.**  
**Counsel**

The Office of Professional Responsibility (OPR) oversees investigations of allegations of misconduct by Department employees. The head of OPR is the Counsel on Professional Responsibility, who serves as a special reviewing officer and adviser to the Attorney General.

OPR receives and reviews allegations of misconduct by Department employees that may violate law, Department orders or regulations, or applicable standards of conduct. The Office also receives and reviews allegations of mismanagement, gross waste of funds, abuse of authority, conduct by Department employees which poses a substantial and specific danger to public health and safety, and acts of reprisal against "whistleblowers."

In the usual case, if a preliminary review by the Counsel reveals an apparent violation of law, the allegation is referred to the component authorized to investigate and prosecute such violations. Allegations of a noncriminal nature are usually referred to the employing component for further internal investigation and disciplinary action, if appropriate. After referral, the Counsel monitors the investigation and disposition of these allegations by the components.

When an allegation of misconduct is of an unusual or sensitive nature, the Counsel will undertake directly the investigation of the matter.

The heads of the Department's offices, boards, divisions, and

bureaus report to the Counsel all accusations of employee misconduct. Each component with an internal inspection office submits periodic reports to the Counsel on all pending internal investigations.

The Counsel submits to the Attorney General an annual report reviewing and evaluating the Department's various internal inspection units. The Counsel also makes recommendations to the Attorney General on the need for changes in policies or procedures that become evident during the course of the Office's inquiries.

During fiscal 1981, OPR received more than 450 complaints or matters addressed to it from various sources. This was the highest number of complaints received in any fiscal year of the Office's existence.

In addition to the complaints or matters directly received, the Office monitored in excess of 1,200 investigations conducted by the internal inspections units of the various departmental components. These totals do not include cases of relatively minor misconduct handled at the field level.

The Office also closed more inquiries into complaints than in any previous fiscal year. In addition, the Office implemented guidelines for the execution of new responsibilities conferred upon it by the Attorney General for the elimination of waste, fraud, and error within the Department.



## Justice Management Division

**Kevin D. Rooney**

**Assistant Attorney General for Administration**

The Justice Management Division (JMD) was established during the early part of fiscal 1980 in concert with the Attorney General's efforts to improve the administration and management of the Department of Justice. Under the direction of the Assistant Attorney General for Administration, JMD performs two primary functions. It exercises Department-level oversight and control over selected management operations. It also provides direct administrative services to the Department's offices, boards, and divisions and, to a limited extent, its bureaus.

In carrying out these responsibilities, JMD functions as the Department's principal liaison with other federal management agencies, including the Office of Management and Budget, the Office of Personnel Management, the General Services Administration, and the General Accounting Office. The Division also functions as the Department's principal liaison with the Judiciary and Appropriations committees, and their subcommittees, of the Congress.

Within the Division, staffs with similar functions and related areas of responsibility are grouped into three offices, each directed by a Deputy Assistant Attorney General. The Budget, Evaluation, and Finance Staffs constitute the Office of the Controller; the Personnel and Training, Property Management and Procurement, and Records and Publications Staffs constitute the Office of Personnel and Administration; and the Systems Policy and Planning, Systems Design and Development, Systems Operations Staffs, and the Library constitute the Office of Litigation and Management Systems.

Four staffs with unusually sensitive areas of responsibility report directly to the Assistant Attorney General or to his principal Deputy. These include the Office of Administrative Counsel, the Security Programs Staff, the Equal Employment Opportunity Staff, and the Audit Staff. Highlights of the Division's activities are described below.

### Office of Administrative Counsel

The Office of Administrative Counsel's (OAC) primary mission is to furnish legal advice and guidance to the JMD staffs in the area of administrative law.

Its legal responsibilities include (in addition to providing advice to JMD staffs in such areas as budget, appropriations, procurement, and personnel) reviewing regulations prepared in JMD for legal sufficiency and advising JMD officials (and occasionally other Department officials) on the implementation of the

Freedom of Information Act (FOIA), Privacy Act, Ethics in Government Act, and other statutes.

OAC also assists the litigating divisions in case preparation when the litigation involves actions taken by JMD. In addition, OAC reviews all process served by mail which names certain Department officials as defendants acting in either their official or individual capacities. The office also coordinates the Attorney General's responsibilities under the Newspaper Preservation Act.

### Security Programs Staff

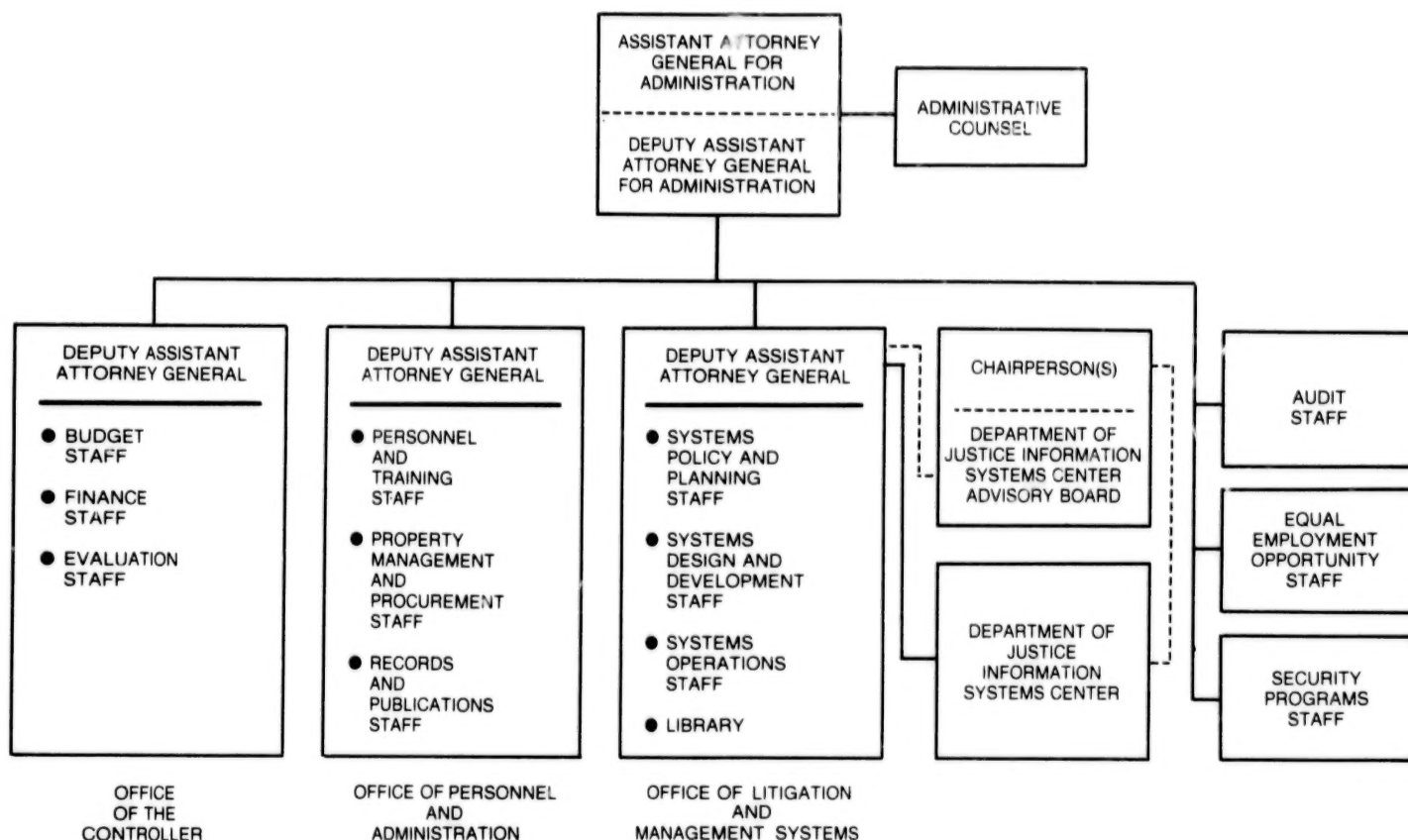
The Security Programs Staff (SPS) develops, formulates, issues, and monitors Departmentwide policies, procedures and standards for personnel and document security, automatic data processing (ADP) and telecommunications security, physical security, special security (concerned with Sensitive Compartmented Information), occupational safety and health, wartime civil emergency preparedness and domestic emergency planning.

These functions are performed under the authority of Executive Orders 10450, 11490, 12036, 12065, 12148, 12196; Public Laws 90-596 and 93-579, Office of Management and Budget Circulars A-108 and A-71; Attorney General Order 739-77; a number of National Security Council Intelligence directives and Director of Central Intelligence directives.

The Security Programs Staff is responsible for:

- Adjudicating and maintaining personnel security investigations, clearances, files, and records;
- Providing instructions and guidance for the proper care, custody and control of national security information;
- Safeguarding ADP/telecommunications resources from accidental or intentional abuse;
- Physical security standards in the Department's offices and buildings;
- Departmentwide programs for the care, custody, and control of Sensitive Compartmented Information;
- Providing a safe and healthful working environment for Department employees, including efforts to reduce or eliminate safety and health hazards;
- Developing wartime emergency plans and procedures, and for monitoring and reviewing them;
- Establishing plans and procedures for responding to resource emergencies, domestic disaster emergencies, internal security emergencies and peacetime nuclear emergencies.

## Justice Management Division



In April 1981, the Emergency Programs Center (EPC) was transferred from the Office of the Deputy Attorney General to the SPS. The center is responsible for assisting the Deputy Attorney General in coordinating the Executive Branch's law enforcement response to civil disturbances and domestic terrorist incidents. Realignment of the EPC provides the Department with a centralized emergency preparedness program, in SPS, that includes both peacetime and wartime emergency preparedness functions.

Notable accomplishments by SPS in fiscal 1981 included oversight and coordination of law enforcement and security at the Cuban Refugee Center in Fort Chaffee, Arkansas. Activities and plans were initiated to respond to problems that might be encountered following curtailment of outplacement processing by volunteer agencies.

SPS also developed two detailed crisis management plans for disturbances in an urban area and terrorist acts directed against a nuclear facility.

The staff also participated in the working group which wrote the security procedures for handling classified national security information involved in litigation. These security procedures, which implement the Classified Information Procedures Act of 1980, are the basis for the requirement that the staff provide security advice and assistance in numerous criminal/civil FOIA cases

being litigated throughout the country. Additionally, the staff has initiated briefings of federal judges on the Executive Branch's requirements to protect national security information.

### Equal Employment Opportunity Staff

The Equal Employment Opportunity Staff develops and monitors policies and programs for the Department in the area of equal employment opportunity. The staff provides technical assistance to bureau-level equal employment opportunity (EEO) staffs, departmental managers and officials, employees and other agency EEO officials, and serves as liaison between various bureaus, the Equal Employment Opportunity Commission, the Office of Personnel Management and the Merit Systems Protection Board.

The staff employs program managers for the Federal Women's, Hispanic Employment, Black Affairs and Selective Placement Programs, as well as specialists responsible for affirmative action planning, recruitment, and discrimination complaint processing. In addition, the staff provides trained and experienced EEO investigators who conduct investigations within the offices, boards, and divisions of the Department. The investigators also provide assistance to bureau-level EEO officers and staff.

During the past year, the Department's EEO efforts continued to focus on recruitment of qualified candidates for employment. To enhance its recruitment activities in employment categories where underrepresentation of minorities, women and handicapped individuals is most evident, the EEO Staff maintains a departmental Talent Bank. The Talent Bank provides a readily available pool of potential applicants for various jobs in the Department.

The Department's employment of minorities, women and handicapped individuals improved slightly in percentage terms, despite an overall decrease in total employment. At the end of June 1980, minorities had represented 23.9 percent of the Department's total work force; women constituted 37.6 percent and handicapped individuals 2.1 percent. At the end of June 1981, minorities constituted 24.8 percent of the Department's total work force, while representation of women and handicapped individuals remained constant at 37.6 percent and 2.1 percent of the total work force, respectively.

Similarly, while the Department has decreased its employment in the principal (key) occupations—attorneys, immigration inspectors, criminal investigators, correctional officers, border patrol agents and deputy marshals—the numbers of minorities, women and handicapped individuals employed in these occupational categories increased. For example, at the end of June 1980, a total of 25,377 persons had been employed in the key occupations compared to 25,262 at the end of June 1981. However, representation of minorities increased from 15.3 percent to 16.0 percent and representation of women climbed from 9.2 percent to 9.9 percent.

To augment its traditional outreach and recruitment efforts, the staff participated in several conferences and seminars to establish and maintain productive relationships with organizations concerned with the employment and advancement of minorities, women and handicapped persons; to inform the public of the Department's programs and policies; and to aggressively recruit women, minorities and handicapped individuals for occupations throughout the Department.

The staff continues to improve the Department's complaints system to allow for the timely and expeditious handling of discrimination complaints at every stage of the process. During the year, 150 complaints of discrimination were filed throughout the Department. The staff monitors the Department of Justice discrimination complaint program in all of the Department's bureaus to ensure compliance with regulatory procedures. Technical assistance is provided to bureau EEO officers, complainants and employees.

## **Audit Staff**

The Audit Staff performs internal audits and reviews of all organizations, programs, and functions in the Department of Justice. In addition, it evaluates the efficiency, accuracy, and effectiveness of automated data processing systems, reviews financial

management information systems, and conducts administrative reviews at the request of the Office of Professional Responsibility.

On April 19, 1981, the Office of Audit and Investigation was transferred from the Office of Justice Assistance, Research, and Statistics and merged with the then Internal Audit Staff to form the present Audit Staff. Consequently, the Audit Staff assumed responsibility for reviewing grants and contracts awarded by the Justice System Improvement Act agencies. It investigates alleged irregularities, conducts special inquiries and coordinates them with other federal and state investigative agencies, and provides training and technical assistance to state and local audit agencies. The office also is responsible for the federal audits of 48 state government agencies and approximately 100 nongovernmental units. In addition, the office coordinates the audits of contracts and grants performed by other federal agencies of Department component activities.

The policy of the Department of Justice is to maintain an effective audit capability to assist the Attorney General and other officials in managing the Department's programs and functions. To accomplish this objective, the Audit Staff reviews operations, makes critical evaluations, reports conditions where improvements can be made, and recommends changes or corrective actions in all organizations, programs, and functions of the Department.

The Audit Staff has continued to undertake audits of increasingly complex program areas and has placed more emphasis on the detection of waste, fraud, and error in Department of Justice programs, grants and contracts. There is special emphasis in the latter two kinds of audits on recovering and saving government grant and contract funds.

During the year, 509 audit reports of grants and contracts were issued to various Office of Justice Assistance, Research, and Statistics, Law Enforcement Assistance Administration, National Institute of Justice, and Bureau of Justice Statistics program and staff offices. The audits included questioned costs totaling \$27,594,113. As a result, the Department recovered or deobligated \$1,795,653.

In addition, 96 bulletins of significant issues involving audits and investigations of grants and contracts were prepared for appropriate officials. Also, 65 significant issues were closed.

The following audits may be of special interest:

- Justice Management Division: A comprehensive management and systems audit of the Department's central payroll system.
- Immigration and Naturalization Service: U.S. Border Patrol management of the Mexican border, motor vehicle fleet management, and a review of the naturalization and citizenship program.
- Drug Enforcement Administration: Imprest Fund operations, an examination of the Technical Investigative Program, and acquisition, control, and disposition of seized property.



- Federal Bureau of Investigation: motor vehicle program.
- Law Enforcement Assistance Administration: technical assistance activities.
- Bureau of Prisons: motor vehicle fleet management.
- Federal Prison Industries: management controls in the Textiles Division, contracting and procurement practices, and reviews of the financial activities at nine institutions.
- United States Parole Commission: travel policies, procedures and practices.
- Offices, Boards, and Divisions: contracting policies and procedures.
- Departmentwide: management controls over requests for space and a review of DOJ compliance with temporary employment tax regulations. The latter was pursuant to a request from the Department of the Treasury to the Office of Management and Budget.

## Office of the Controller

The Office of the Controller is responsible for all budget and financial activities, accounting operations, program evaluations, organization analysis and management assistance studies. The Controller serves as the Department's budget officer, the financial manager of the Working Capital Fund, and the Department's principal contact with the authorization and appropriation committees of Congress, as well as other committees. The office is comprised of three staffs: the Budget Staff, the Evaluation Staff, and the Finance Staff.

### Budget Staff

The Budget Staff is responsible for Departmentwide budget formulation and execution functions. In carrying out these responsibilities, it participates in the development of program budget policy guidelines and prepares budget instructions and estimates for all phases of the budget cycle, including the Congressional authorization process.

The staff also administers Departmentwide controls on appropriations, reimbursements, outlays, personnel and other legal or administrative limitations pursuant to Office of Management and Budget or Congressional directives. In addition, the staff conducts financial analyses and status-of-funds reviews, and prepares apportionment and reappropriation schedules and other reports on budget execution.

In addition to achieving its recurring objectives during fiscal 1981, the Budget Staff also had several other notable achievements:

- Provided extensive analysis and other staff support to the Attorney General, Deputy Attorney General, and Assistant Attorney General for Administration regarding the complete revision of the 1982 budget submission by the new Administration.

- Developed a single submission to be provided to the various Congressional authorization and appropriation committees. The joint submission significantly reduced unnecessary duplication of effort, while improving the budget justification materials provided to Congress.
- In response to new Administration initiatives, extensive support was provided to the Office of Justice Assistance, Research, and Statistics, regarding termination of its major grant programs.

### Evaluation Staff

The Evaluation Staff is responsible for conducting, reviewing, and coordinating program evaluation efforts throughout the Department in order to provide information to assist top-level officials in the assessment of program efficiency and effectiveness. In addition, it conducts management and organization analyses and makes recommendations to senior officials and program managers for improvement. It also develops Departmentwide policies concerning program evaluation and management analysis and advises the Assistant Attorney General for Administration on all matters relating to program evaluation, organization and management.

During fiscal 1981, the Evaluation Staff completed the following studies:

- Evaluation of Department of Justice management of the FOIA and Privacy Act. The organizational structure, staffing, and management of the Administrative Counsel's FOIA/Privacy Act operation were examined and recommendations for improving the effectiveness and efficiency of that operation were developed.
- Evaluation of the effectiveness of economic crime enforcement units to determine how effectively the Economic Crime Enforcement program has been implemented.
- Evaluation of Department of Justice law enforcement training provided to state and local police to determine the value of Department policy training to states and localities.
- Study of the short-term detention of federal detainees (examination of the federal short-term detention problems in the judicial district of western Washington as a case study).
- Study of EEO complaint investigations (Phase II), to determine the causes of delays in the informal adjustment and proposed disposition stages of the complaint process and recommend actions to speed up the process.
- Study of the use of U.S. Marshals' service of private civil process, to examine alternatives to this traditional role of U.S. Marshals.
- Study of administrative services, to develop a mechanism that would allow users to rate the JMD's administrative service performance.

## Finance Staff

The Finance Staff is responsible for developing and directing Departmentwide financial management policies, programs, procedures, and systems concerning financial accounting, planning, analysis and reporting. The Finance Staff also provides technical leadership and support to new departmental financial accounting and information systems, and directs the Department's day-to-day financial management operations (including control of the accounting for appropriations and expenditures, voucher examinations and audits, and promulgation of policies for travel and other necessary regulations). The Finance Staff establishes the accounting principles and standards of the Department, approves the Department's financial management systems and coordinates the reviews of operations.

In addition, the staff is responsible for the Department's Financial Management Information System (FMIS), which provides Department management with an automated, on-line, financial data base for developing, retrieving and analyzing key decisions made throughout the budget planning-formulation-execution cycle. The staff also develops, maintains and operates the accounting system for the Department's offices, boards, and divisions and the U.S. Marshals Service.

During fiscal 1981, the Finance Staff's notable achievements were as follows:

- Performed a post-implementation review of the Legal Activities and General Administration (LAGA) accounting system.
- Expanded to all institutions of the Bureau of Prisons and FMIS-based distribution module for budget formulation and obligation tracking.
- Integrated the Foreign Claims Settlement Commission's accounting requirements into the LAGA accounting system.
- Implemented a system-to-system interface between the Property Management System and the LAGA accounting system. The system design was submitted to the General Accounting Office and approved.
- Expanded the FMIS by the development and implementation of Obligation Module IV. This expansion included a system-to-system interface between FMIS and the LAGA accounting system for payments and inclusion of additional legal divisions and JMD in the obligation and payments module.
- Improvements in travel management were achieved through the updating of orders and the distribution of special materials to the operating elements of the Department.
- Submitted comments on the General Accounting Office's proposed illustrative "Accounting Procedures for Federal Agencies" and several items of proposed legislation which would impact upon financial operations.
- Assisted in the Department's debt collection improvement

efforts by designing improvements in processing systems, preparation of special analyses and special reports.

## Office of Personnel and Administration

The Office of Personnel and Administration (OPA) and its staff elements are responsible for planning and coordinating Departmentwide programs in assigned functional areas and for developing and implementing policies and programs which fully support the various missions of the Department. The organization also provides direct support to the Department's offices, boards, and divisions. It is the focal point for liaison with other federal agencies with broad, cross-government policy responsibility, such as the Office of Personnel Management, the General Services Administration, the General Accounting Office, the Government Printing Office, and the National Archives and Records Service, on matters concerning the interpretation of Department or governmentwide policies in the substantive areas of OPA's activity. Finally, OPA reviews programs of Department organizations for overall effectiveness and for compliance with the legal and regulatory requirements.

OPA consists of three separate staff organizations and two policy control units. The staffs include the Personnel and Training Staff, the Property Management and Procurement Staff, and the Records and Publications Staff. The policy control units include the Contract Review Committee and Small and Disadvantaged Business Utilization.

### Personnel and Training Staff

The Personnel and Training Staff plans and directs Departmentwide personnel management and training programs, develops and implements personnel policies and programs which support the mission of the Department, ensures a productive and effective work force, and provides direct administrative support in these areas to the offices, boards, and divisions of the Department.

In addition to its provision of direct support, the staff operates in the following discrete areas of activity: personnel policy, training, labor management relations, pay and personnel management evaluation, employee assistance, and the occupational fitness program. Each is discussed briefly below:

- *Personnel Policy.* The basic implementation of the employee performance appraisal system required by the Civil Service Reform Act was completed in fiscal 1981. This involved gradually phasing in various categories of employees—first, those in the Senior Executive Service, then those in Merit Pay, and lastly, all of the others. During this period, we requested and obtained a special seven level performance appraisal plan for the Federal Bureau of Investigation (the departmental plan calls for five levels); that plan has now been implemented with respect to both executive and nonexecutive employees.



The Department completed its fourth year as a federal leader in the Presidential Management Intern Program. Since the program's inception, 45 outstanding interns—all with graduate degrees in public and business administration—have been selected following a rigorous screening process and placed in intensive developmental assignments and training courses. Fifteen have now successfully completed the program and are serving in career positions at the GS-12 and GS-13 levels. An additional 15 are in their second year and seven new interns are beginning the program. On a different front, we have revised and reissued the departmental order establishing competitive areas for reduction-in-force purposes throughout the Department. A new handbook has also been developed containing specific guidance (and examples) on reduction-in-force, which can be used by managers, personnel specialists and employees. Contingency planning for reduction-in-force is also well under way in several of our organizations and minor but significant reorganizations have been carried out.

- **Training.** In fiscal 1981, the Career Management Group directly trained 1,621 employees from the offices, boards, divisions, and bureaus through 64 training programs offered by the Department Training Center. About 75 percent of these trainees were employees of the offices, boards, and divisions. Fiscal 1981 training efforts represent a 29 percent increase over the number of employees directly trained by the group in fiscal 1980, and a 69 percent increase over the number trained in fiscal 1979.

The Executive Development Program was expanded to include specialized training for attorney and non-attorney Senior Executive Service candidates in the areas of personnel and financial management and management information systems. A total of 475 individuals participated in the 20 programs in the Attorney General's Senior Executive and Management Seminar Series. Direct technical assistance and guidance was provided organizations and individual Senior Executive Service candidates in developing individual development plans and scheduling required executive development training activities.

- **Labor Management Relations.** Labor union activity remained at a high level during fiscal 1981. Perhaps the most important labor-management relations matter that faced the Department was the American Federation of Government Employees effort to consolidate its 12 Department units into one Departmentwide, Department-level bargaining unit. A hearing was held on the petition with the Federal Labor Relations Authority. The Department presented 16 witnesses and over 100 exhibits. A decision on this matter is not anticipated until the latter part of 1982. The Labor Management Relations Group was involved in numerous issues during fiscal 1981. These included reviewing agreements negotiated by five Department organi-

zations to determine whether they conformed to applicable laws and regulations, disapproval of 37 negotiated articles that failed to meet these criteria, making responses to three union appeals of bureau and Department assertions of non-negotiability involving nine proposed articles, the filing of exceptions with the Federal Labor Relations Authority regarding six arbitration awards, and the filing of oppositions for exceptions submitted by unions to the Federal Labor Relations Authority in two other cases.

In regard to its adverse action and other responsibilities, the staff issued new departmental orders on "Discipline and Adverse Actions," "Labor Management Relations," and amended the Department's grievance regulations to provide an expedited procedure for resolving merit pay grievances.

- **Pay and Personnel Management Evaluations.** The Department's Senior Executive Service performance appraisal system completed its second full cycle. There were notable improvements in the administration of the system as a result of the first year's experience. In addition to the award of 37 Senior Executive Service bonuses, two Department executives were awarded Presidential ranks of Meritorious Executive, which carry a stipend of \$10,000. The Merit Pay System management and supervisory positions, from Grade 13 through Grade 15, was implemented in the Department.
- **Employee Assistance.** The Employee Assistance Program provided counseling and referral assistance to employees who are experiencing difficulties with alcohol, drugs, or emotional problems. There has been a marked increase in the number of employees who have participated in the program, through both supervisory and self-referral. A vigorous program of counseling and referral has been effective in assisting troubled employees and their supervisors. Training of supervisors and managers has been continued to assure appropriate responses to employees who are experiencing one type of problem or another. In this connection, employee assistance has been included in all performance appraisal training and in the Executive Seminar for Attorney SES candidates.
- **Occupational Fitness.** The Occupational Health Physical Fitness Program provides preventive health/fitness services. Among them are general and specific exercise programs, health fairs, cardiopulmonary resuscitation training, stress management programs, and smoking cessation clinics. Lectures and seminars have also been held on such topics as physical training, the prevention of athletic injuries, the treatment of lower back problems, and nutritional counseling, which impact on a large number of Department employees. Through ongoing services of the program 200 to 500 Justice employees are served on a daily basis.

## Property Management and Procurement Staff

This staff is responsible for the development of Departmentwide policy in the areas of procurement, facilities acquisition and maintenance, supply, energy utilization, and motor vehicle management, among others. It is also responsible for the direct provision of administrative support in these areas to the offices, boards, and divisions of the Department. The staff has three sections:

- **Procurement Management Section.** During fiscal 1981, 166 contract actions totaling approximately \$15,380,000 and 6,740 small purchase actions totaling approximately \$15 million were executed on behalf of the offices, boards, and divisions.

An automated clause manual will soon be implemented on a trial basis, to establish consistency and enhance quality in contractual instruments. The manual sets forth special provisions used frequently by the Department for a variety of contracts. Organized as to contract type, the special clauses are coded to permit automated selection and tailoring to the needs of specific contractual arrangements. The manual is in loose-leaf form to facilitate additions, improvements and changes required by issuance of new regulations and directives.

A Departmentwide advance procurement planning system has been drafted and will be implemented in early fiscal 1982. This system will be used to forecast needed procurement resources and to assist project offices in planning the programmatic functions which comprise part of the procurement process. The system will also aid in a more equalized distribution of procurement obligations by fiscal quarter.

- **Facilities Management Section.** The section was directly involved in the acquisition, design and occupancy of space in Bethesda, Maryland, and Bailey's Crossroads, Virginia, to relieve crowding in downtown offices. Additional space will be sought in downtown Washington, D.C., during fiscal 1982 to provide the legal divisions with an adequate amount of space to meet their assigned responsibilities. During fiscal 1981, the section became deeply involved in the review of proposed legislation and executive orders. This involvement included review of existing laws, regulations and orders; assessment of proposed revisions by Congress or the Executive Branch to existing statutes; and determination of the impact on all components of the Department, from a facilities and real property aspect.
- **Energy and Material Management Section.** The Department property management initiatives were described in a document which was furnished to the General Services Administration for distribution to all other federal agencies for use in improving their property management programs. We have since received and responded to numerous inquiries

from state agencies and the private sector for copies of this property initiatives package.

The section completed the implementation of the new automated property accountability system, which supports the offices, boards, and divisions and the U.S. Marshals Service. This system has full interface to the Department's accounting system and has over 57,000 line items valued at over \$26 million.

- Property management reviews were conducted for the offices, boards, and divisions, the Federal Bureau of Investigation, and the Drug Enforcement Administration, utilizing a new evaluation plan designed by Energy and Materiel Management Section personnel to analyze all supply support activities throughout the Department.

Over \$42,000 in office furniture was rehabilitated and reissued in lieu of purchasing new furniture. This represented a cost savings to the offices, boards, and divisions of over \$160,000. Also, we obtained excess property, both from within the Department and other federal agencies, valued at over \$35,000 for reissue to the offices, boards, and divisions at no cost.

During fiscal 1981, significant achievements were made in the Department's energy management program. The 10-Year Plan for Energy Management in General Operations was completed and the 10-Year Energy Conservation Plan for Buildings was revised in its entirety. Both plans were submitted to the Department of Energy. Work commenced on revising the Departmentwide order describing the Energy Management Program, originally issued in 1974. Under the program, the Department achieved a 6 percent reduction in energy consumption in fiscal 1981 compared to the previous year, despite a 3.6 percent increase in Department-held building areas and small increases in some equipment such as aircraft.

## Records and Publications Staff

The Records and Publications Staff is responsible for Departmentwide policies and programs in the areas of records and mail management and all phases of printing and publications management. The staff also provides direct operating support in these areas to the offices, boards, and divisions of the Department. This support includes the provision of graphics services and operation of the Department's Briefing and Conference Center.

Notable achievements of fiscal 1981 include:

- The production of 121.9 million copies through use of in-house printing and related facilities. This represented a 2.8 percent decrease, while the Department's total copying/duplicating requirements increased by 9.2 percent to 337.7 million copies.
- The issuance of a comprehensive directive manual on files maintenance and records disposition. To further acquaint

the administrative personnel with this publication, a two-day training course was developed and is being conducted.

- The evaluation of files maintenance and records disposition operations in the 95 U.S. Attorneys' Offices.
- The submission of disposition schedules for all litigative case files in four legal divisions to the National Archives and Records Service for formal approval. The staff also prepared requests for records disposition authority covering program files of six other Department of Justice components, including those of the Office of the Attorney General and the U.S. Trustees' Offices.
- The successful installation and operation of automated mail delivery systems (mailmobiles) on three of seven floors in the Main Justice Building.

### **Contract Review Committee**

The Contract Review committee is responsible for the review, prior to award, of all proposed contract awards that exceed \$100,000 on a competitive basis, and proposed awards that exceed \$50,000 on a noncompetitive basis. The Review Committee began operations on February 2, 1981, and during the remainder of fiscal 1981, 182 proposed contract awards valued at \$52,884,170 were reviewed for legal sufficiency prior to award. The review process has significantly enhanced the quality of the contracting process within the Department.

### **Office of Small and Disadvantaged Business Utilization**

The Office of Small and Disadvantaged Business Utilization has made significant progress during fiscal 1981 in assisting small businesses and small businesses owned and controlled by socially and economically disadvantaged individuals in obtaining contracts let by the Department.

During fiscal 1981, the Department expended \$159,932,000 with small businesses and \$18,525,000 with minority businesses. Procurements from small businesses increased 2.6 percent and procurements from minority businesses increased 57.3 percent over fiscal 1980. The Department also procured \$15,790,000 from firms located in labor surplus areas and a total of \$3,715,000 from women-owned business concerns.

The Department created a first by conducting a Small Business Fair in May. We invited more than 200 small business firms to the fair, which brought together representatives from the firms and members of the procurement staffs of the bureaus to discuss contracting opportunities and how the firms could become eligible for departmental awards.

### **Office of Litigation and Management Systems**

The Office of Litigation and Management Systems (OLMS) administers the departmental information and telecommunica-

tions systems policy and programs, provides information systems support to the legal divisions of the Department, and manages the large-scale, sophisticated data center in support of the offices, boards, divisions, and bureaus of the Department.

In this regard, OLMS directly monitors and supervises the activities of the following staffs.

#### **Library**

The Main Library, in conjunction with the division libraries, supports the legal research and information needs of Department of Justice attorneys and staff. The combined library network now totals 240,000 volumes, primarily in the areas of law, legislation and political science. Business and economics, medicine, international relations and public administration represent substantive areas of additional interest. Special collections include: rare and older legal materials, departmental publications (as well as materials about the Department), and legislative histories.

A growing microform collection of over 45,000 volumes is also maintained. Legal research assistance is provided through traditional manual resources, as well as on-line legal and bibliographic data base searching. The library system maintains access to many on-line information retrieval systems.

During 1981, the Library staff participated in a variety of information management training activities in an effort to heighten awareness of research services provided to Department staff, including: demonstration of automated information retrieval systems to Senior Executive Service candidates; Library research services briefings; and, publication of the *Library Handbook*, map, and several bibliographies.

The Library took over management of the FOIA Reading Room during 1981. The Library has continued its management automation activities, including: development and implementation of a financial accounting module for the automated acquisitions system, as well as development of an automated serials check-in system. The Library pursued expansion of research services to departmental staff and continued implementation of management improvements through automation.

#### **Systems Operations Staff**

The Systems Operations Staff (SOS) manages the large-scale information processing facility of the Department. This staff provides a broad range of modern information processing services to departmental components and selected outside organizations on a resource-sharing basis.

SOS reviews and approves all procurement actions, solicitations, proposals and contracts for information, automated office, micrographic, and communications equipment, and related services consistent with approved plans, objectives and budgets. It also manages a Departmentwide message switching facility in support of domestic and worldwide communications requirements, and operates all Departmentwide information systems, including those concerning employment information systems, cen-



tralized payroll accounting, and litigation support and reference services. These functions are fulfilled within SOS by the four functional services.

*The Justice Employee Data Service* maintains and operates the automated Justice Uniform Personnel System (JUNIPER) and Payroll Accounting System. JUNIPER provides the basic data resource for employee personnel administration. It produces 446 reports on a recurring basis in support of the Department's personnel administration, payroll accounting, security classification, employee training, and equal employment opportunity programs. The data base serves as the basis for the Payroll Accounting System which provides for the payment of salaries for over 35,000 employees.

*The Justice Telecommunications Service (JTS)* has departmental policy oversight responsibilities, provides technical support on the acquisition of telecommunications equipment and services, and serves as the Department's principal representative on the Inter-Department Radio Advisory Committee.

JTS also manages the operations of the Justice Telecommunications System, the secure message and secure voice centers and the Department of Justice CENTREX II telephone system which serves all Department offices in Washington, D.C., except for the Federal Bureau of Investigation (FBI), and provides 24-hour operator assistance.

During fiscal 1981, intelligent terminal systems with multiple work stations were installed in the Telecommunications Switching Center as replacements for the existing paper-tape oriented teletypewriters. As a pilot project, a small number of intelligent terminals have been installed and are operating in the headquarters activities of the U.S. Marshals Service, the Bureau of Prisons, the Executive Office for U.S. Attorneys, and the U.S. National Central Bureau of INTERPOL.

Accompanying this effort, specifications were developed delineating terminal hardware requirements for inclusion in a request for proposals. This action allows the replacement, by competitive means, of all Justice Telecommunications System teletypewriters, including the terminals acquired for the pilot project. The system provides 24-hour access to interconnecting telecommunications networks for the 447 terminals on the system in departmental offices throughout the continental United States. In fiscal 1981, nearly 1,028,800 messages were transmitted.

The Deputy Attorney General approved a JMD recommendation to conduct a study of departmental data communications in order to determine the extent to which current facilities may be merged into a common system. The study will document the current and anticipated data communication requirements of the Department through 1991 for each office, board, division, and bureau, and it will provide recommendations concerning network optimization which should result in substantial savings.

*The Agency Assistance Service (AAS)* serves as the staff's principal point of contact to assist the departmental organizations in the acquisition and use of data processing and telecommunica-

tions services. AAS personnel review and evaluate all requests for data processing, word processing, micrographics, and data communication services; determine compliance has been achieved with appropriate federal and departmental policies and procedures; and coordinate the orderly acquisition of those services provided by the SOS. AAS staff provide interpretations of data processing, word processing, and communications policies promulgated by the Office of Management and Budget, the General Services Administration, and the Department. The AAS also manages the Departmentwide word processing and micrographics programs. Personnel of this service interface with the General Services Administration to achieve compliance with regulatory requirements associated with the acquisition of information processing and communications equipment or services.

*The Justice Data Management Service (JDMS)* provides 24-hour-a-day centralized data processing services and technical support for all of the component organizations of the Department, except the Federal Bureau of Investigation. The JDMS equipment configuration consists of several large sized computers and a full range of peripheral devices. The Computer Operations Section executes all user jobs submitted for computer processing and is responsible for maintaining a high degree of reliability for the various organizations' on-line processing systems. The Technical Support Section is responsible for the evaluation, selection, implementation and maintenance of all systems software required to make effective use of the computer equipment. The Technical Support staff assists users in solving any systems software problems, monitoring equipment performance and implementing the necessary adjustment to ensure effective and efficient use of the computer resources. Technical information is compiled and disseminated to JDMS user organizations. The Operations Support Section is responsible for the evaluation, selection, installation and maintenance of the data processing equipment, and also develops and conducts formal technical training classes for the organizations which utilize the services of the JDMS.

## **Systems Design and Development Staff**

The Systems Design and Development Staff (SDDS) develops and maintains information and communications systems that are Departmentwide in scope, on a reimbursable basis. This includes systems in support of legal research, protracted case litigation, caseload management, payroll and personnel administration, and financial management processes. SDDS also helps departmental organizations acquire information and communications capabilities required to accomplish a wide range of managerial and/or operational tasks. In addition, SDDS conducts ongoing research into the applicability of evolving technologies of departmental information and communications requirements, developing education and training programs for departmental personnel in the area of information and communications sciences.

These responsibilities are fulfilled within the SDDS by the Legal Systems Development Group, the Administrative Systems

Development Group, and the Systems Training and Special Projects Group.

*The Legal Systems Development Group* provides reimbursable systems analysis and computer programming services to the U.S. Attorneys' Offices and to the legal divisions of the Department in support of legal activities. *The Administrative Systems Development Group* develops and maintains the automated employee data systems and other administrative support systems for the Department, excluding the Federal Bureau of Investigation, providing systems analyses and computer programming services in areas such as personnel, payroll, accounting and property management. *The Systems Training and Special Projects Group* develops and implements education and training programs that relate to the field of computer technology and information and communications systems.

The most significant system developed and maintained by the Legal Systems Development Group is the Justice Retrieval and Inquiry System (JURIS), which provides on-line, interactive access through remote terminals to a vast body of federal and case law, federal statutory and regulatory material, and attorney work products as an aid to legal research.

There are presently 253 JURIS terminals accessing a 3.6 billion character general legal data base which includes the full text of 150,000 federal decisions, the West Digest of 150,000 federal and 380,000 state decisions, the full text of the U.S. Code and Public Laws, and numerous other files. There are over 5,500 user identification cards issued to lawyers in 300 organizations. JURIS continues to serve as the search and retrieval and data base maintenance software for the Law Enforcement Assistance Administration's National Criminal Reference Service, which has over 20,000 subscribers. In addition, JURIS is playing a large role as an automated litigation support tool.

Automated litigation support is the application of modern computer technology and information science skills to the management of cases involving complex issues and massive numbers of documents. The Legal Systems Development Group has provided technical assistance to Department attorneys in the use of automated litigation support tools for over 30 cases.

Examples of products and capabilities made available through this service are: organizing and producing statistics from thousands of subpoenaed records to show questionable patterns; searching thousands of pages of full text hearing transcripts for preparation of briefs; compiling profile reports from thousands of arrest records; impeaching witnesses using prior depositions, interrogatories and testimony loaded into computer searchable files; and arranging many thousands of factual items from case documents for trial and appeal. The number of cases handled by this group doubled this past year and a similar increase is expected next year. Additionally, activities have expanded outside the Department to matters in other departments or agencies which will finally be litigated by the Department of Justice.

## **Systems Policy and Planning Staff**

The Systems Policy and Planning Staff provides concentration of specialized areas of information systems activities in one staff, composed of three groups.

*The Systems Policy and Planning Group* (SPPG) is responsible for the development of departmental policy relative to the planning, acquisition and operation of information and communications systems, formulating and maintaining annual and long-range information and communications systems plans in support of departmental policies and objectives, monitoring departmental information and communications systems to ensure conformance with established policies, plans and guidelines, validating continued need, and determining if less costly or more effective alternatives exist. SPPG also coordinates most system-related responses to inquiries from Congress, the General Services Administration, the General Accounting Office, and the Office of Management and Budget.

This staff has undertaken to establish a comprehensive management program for the planning, development, acquisition, and operation of automated information systems. This Departmentwide oversight program is documented in the Automated Information Systems Policies Order.

A major portion of SPPG resources is concentrated in support of the budget formulation process. The staff reviews all organizational requests for proposed expenditure for ADP/telecommunications equipment, software and services. The related fiscal 1983 submissions of departmental organizations were reviewed and formal analyses and recommendations were prepared for several of the systems, with emphasis on planning analyses.

SPPG functions now include the public-use reports form clearance program, including the preparation and submission of the Department's Information Collection Budget to the Office of Management and Budget. As part of the reports clearance function, SPPG collected, analyzed and forwarded for review and approval to the Office of Management and Budget, approximately 15 requests per month from various departmental organizations.

Additionally, SPPG is responsible for the review of all research and development activities throughout the Department and for the monitoring of a contractor-conducted ADP risk analysis study as required by Transmittal Memorandum No. 1 to Office of Management and Budget Circular A-71.

SPPG's workload has been and will continue to be significantly increased through the enactment of P.L. 96-511, The Paperwork Reduction Act of 1980.

*The Systems Research and Standards Group* is divided into two separate functional responsibilities, data processing research and standards. The Systems Research Branch analyzes, evaluates, and reports to management on developments in computer equipment, telecommunications, computer software, and associated technological functions which may contribute to more effective performance of the Department's ADP operations. The



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Systems Standards Branch coordinates information processing standards for the Department.

*The Automated Systems Review Group* administers ADP audit policy and procedure initiatives, performs quality and policy reviews of ADP systems and functions, and reviews information resource management activities.

Notable accomplishments in fiscal 1981 include:

- Development of an Automated Information Systems Policy Order which will strengthen the Department's ability to exercise management oversight for the planning, development, operation and review of automated information systems within the offices, boards, divisions, and bureaus.
- Completion of a Research and Development Order to establish a departmental management policy regarding the procurement of research and development activities.
- Completion of a project plan for the U.S. Attorneys Prosecutor's Management Information System (PROMIS), and its presentation to the PROMIS oversight committee. This plan outlines a four-year timetable for nationwide implementation of the PROMIS system.
- The ADP risk analysis is approximately 65 percent complete. As a result of this ongoing study, several user organizations have taken interim actions to finance operational security.
- The Systems Research Branch completed studies dealing with data base management systems, computer graphics, and optical character recognition, and has recently initiated studies concerning office automation, worldwide developments in fingerprinting technology, and upper management responsibilities in ADP system development.

### **Justice Information Systems Center**

The Justice Information Systems Center is responsible for overseeing and monitoring the provision of automated legal research services for all federal law offices, and for development

of a litigation notice system that provides timely information about all civil litigation pending in the courts in which the federal government is a party or has a significant interest. The center is also responsible for overseeing and monitoring the development of a Department-level caseload management system, and for activation and coordination of compatible, comprehensive case management information and tracking systems within the Department's litigating offices. The center was established July 30, 1980, in response to the requirements of the Department's 1980 Authorization Act and Executive Order 12146. It coordinates the development of a Departmentwide list of definitions of common data elements, key words and concepts to allow for the consistent aggregation of case management and tracking information; develops a Departmentwide design and procedure for having component organizations report information to the center; begins aggregating and analyzing information received from systems; determines functional, informational and data service requirements of the Attorney General, Deputy Attorney General and Associate Attorney General, each of the legal divisions, the U.S. Attorneys, and other departmental offices deemed necessary; coordinates the development of the design of the Litigation Notice System; and coordinates and monitors the development and implementation of an automated legal research system.

The Litigation Notice System pilot project has been designed to offer a single point of contact for all non-criminal case activity in the federal government. The system is currently awaiting evaluation. Significant planning work was completed on the necessary requirements study for the governmentwide automated legal research system envisioned by the Executive Order.

The other major activity of the center involved the creation and implementation of a Departmentwide case management system designed to provide accurate statistical information about the case workload of the Department's litigating activities. The system design is completed, a test data base has been created, and sample reports have been produced. During 1982, the system will be operational.

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## Office of Intelligence Policy and Review

**Richard K. Willard**  
**Counsel for Intelligence Policy**

The Attorney General has significant responsibilities regarding the work of U.S. intelligence agencies as a result of various executive orders, directives, and legislation such as the Foreign Intelligence Surveillance Act of 1978.

The responsibilities include advice to the intelligence community on questions of law and procedures, as well as oversight of certain intelligence activities.

The Office of Intelligence Policy and Review (OIPR), under the direction of the Counsel for Intelligence Policy, assists the Attorney General in his execution of these responsibilities.

In addition, OIPR directly advises Department units and other Executive Branch agencies on the interpretation and application of statutes, executive orders, regulations, and procedures relating to U.S. intelligence activities.

During the past year, OIPR participated in drafting revisions to the principal executive order governing the activities of U.S. intelligence agencies. The new order simplifies and clarifies the authorities and responsibilities of these agencies, while maintaining the requirement that all intelligence activities be conducted in accordance with the Constitution and laws of the United States.

The Office also represented the Department in the proposed revision of the executive order that establishes the standards for the classification and declassification of National Security Information. This process is intended to draw a more balanced line between the needs of the government to protect sensitive information and the public interest in knowing about the activities of its government.

Representing the Attorney General in fulfilling his responsibilities under pertinent executive orders, OIPR attorneys play a significant role in establishing or approving procedures for the conduct of intelligence and counterintelligence activities both in the United States and abroad.

These procedures must be balanced to permit all necessary intelligence and counterintelligence activities consonant with protection of individual constitutional rights and privacy.

Through continual consultation with intelligence agency counsel, National Security Council staff, and other appropriate individuals in the Legislative and Executive Branches, OIPR attorneys have participated in the drafting, analysis, approval and amendment of more than 30 discrete sets of procedures which regulate the intelligence activities of the Federal Bureau of Investigation, the National Security Agency, the Central Intelligence Agency, the Department of Defense, and the Department of the Treasury. These procedures are now being reviewed and re-

vised to take account of the past year's experience and the provisions of the new executive order.

During the year, the Office also represented the Attorney General and the Department of Justice on the National Foreign Intelligence Council, the Interagency Coordinating Committee for U.S.-Soviet Affairs, the Director of Central Intelligence Committee on Exchanges, the National Security Council Coordinating Committee on Technology Transfer, the Export Control Enforcement Working Group and various subcommittees of these and other groups.

OIPR plays a substantial role in the development of legislative initiatives concerning the conduct of U.S. intelligence activities.

During fiscal 1981, the Office prepared and delivered testimony and recommendations to Congress in support of legislation to prohibit disclosure of the identities of undercover intelligence personnel. The Office also participated in the development of the Justice Department's proposals for amendments to the Freedom of Information Act.

The Office's responsibilities for intelligence operations involve requests from intelligence agencies to conduct certain intelligence-related activities. These requests are reviewed by OIPR attorneys for legal sufficiency and consistency with applicable guidelines and directives. In some situations, OIPR has delegated authority to act upon the requests; in most cases, the Office makes recommendations to the Attorney General.

After authorization by the Attorney General, applications for certain kinds of electronic surveillance are presented to the U.S. Foreign Intelligence Surveillance Court by OIPR attorneys who appear as legal counsel for the applicant intelligence agencies.

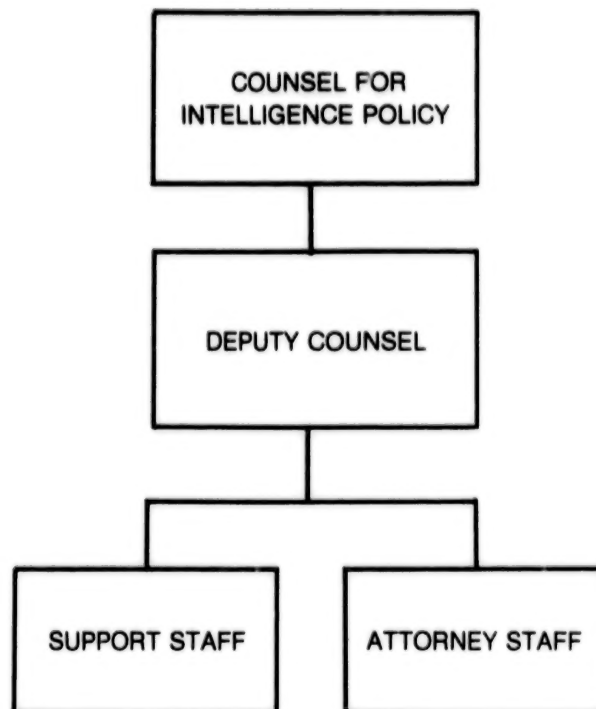
When required, legal memoranda, motions and other legal papers are also prepared and filed with the court. During the year, the U.S. Foreign Intelligence Surveillance Court upheld the position of OIPR that the court's jurisdiction does not extend to physical searches conducted for intelligence purposes.

The Office also participates in criminal and civil litigation involving persons overheard during the course of an electronic surveillance conducted under the Foreign Intelligence Surveillance Act. During the year, OIPR filed motions and other pleadings in several cases and successfully argued that the surveillance in each case had been lawfully conducted.

The Office monitors certain intelligence and counterintelligence investigations and other activities by Executive Branch agencies to ensure conformity with statutes, executive orders, procedures, and guidelines regulating such activities. During the

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## Office of Intelligence Policy and Review



year, as part of its oversight functions, OIPR attorneys conducted several field evaluations of how the procedures governing electronic surveillance in foreign intelligence and counterintelligence cases were being implemented. This study was conducted for the Attorney General and involved trips to field facilities of intelligence agencies, interviews of operational personnel, and review of surveillance logs.

OIPR prepares the Attorney General's semiannual report to the Congress on electronic surveillance conducted under the Foreign Intelligence Surveillance Act. Supplementary briefings on electronic surveillances and other intelligence activities of interest to the House and Senate intelligence committees are also undertaken as required.

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# United States Parole Commission

## Benjamin J. Malcolm Acting Chairman

The United States Parole Commission was established in May 1976, by the Parole Commission and Reorganization Act. The agency was previously known as the United States Board of Parole, created by Congress in 1930.

The Commission is an independent agency in the Department of Justice. Its primary function is to administer a parole system for federal prisoners and develop federal parole policy.

The Commission is authorized to:

1. Grant or deny parole to any eligible federal prisoner.
2. Impose reasonable conditions on the release from custody of any prisoner on discretionary parole or mandatory release by operation of "good-time" laws.
3. Revoke parole or mandatory release.
4. Discharge offenders from supervision and terminate the sentence prior to the expiration of the supervision period.

The Commission is also authorized, under the Labor Management Reporting and Disclosure Act and the Employees Retirement Income Security Act of 1974, to determine if certain prohibitions on holding office in a labor union or an employer group may be withdrawn for offenders who apply for exemption.

The Commission consists of nine Commissioners appointed by the President with the advice and consent of the Senate. They serve six-year terms and may hold office for no more than 12 years. The Commissioners are a policymaking body and meet at least quarterly.

The Chairman and three Commissioners are stationed in Bethesda, Maryland. The other five act as Regional Commissioners for the regional offices in Philadelphia, Atlanta, Dallas, San Francisco, and Kansas City, Missouri. The three Commissioners in Bethesda make up a National Appeals Board.

Hearing examiners in the regional offices and at Headquarters conduct parole hearings with eligible prisoners. They travel to each institution on a bimonthly schedule. The examiners function as two-person panels to conduct hearings and make recommendations to the Regional Commissioner relative to parole revocation.

The Commission is assisted by the Bureau of Prisons and U.S. Probation Officers attached to each federal district court. The Bureau of Prisons staff prepares institutional reports for the Commission, makes the arrangements for hearings, and carries out the release procedures to implement an order to parole. Probation Officers act, according to statute, as parole officers for the Commission. They make pre-parole investigations and reports and provide community supervision over prisoners released to the jurisdiction of the Commission.

The Probation Officers report apparent violations of conditions of release. If an apparent violation occurs, the Commission may issue a warrant for the retaking of the alleged parole violator. The Probation Officers also make recommendations to the Commission regarding early termination of the supervision period for certain releases.

Commission procedures seek to eliminate unnecessary uncertainty for incarcerated offenders regarding the date of their eventual release. By informing prisoners at the outset of confinement of their probable release date, the Commission hopes to defuse a substantial source of institutional tension and enable both prisoners and staff to better organize institutional programs and release plans.

Under Commission regulations, all federal prisoners serving a maximum term exceeding one year are afforded parole hearings within 120 days of confinement at a federal institution—except those prisoners with a minimum term of parole ineligibility of 10 years or more. These prisoners must serve their minimum term before receiving an initial hearing.

At the initial hearing, the Commission's examiner panel discusses with the prisoner his offense, criminal and social history, institutional plans and programs. Following the interview, the panel may recommend, after consulting the Commission's paroling policy guidelines, either: 1) a presumptive date of release (which may be either a parole date or the prisoner's mandatory release date on good time reductions) or 2) a 10-year reconsideration hearing, if a presumptive date should not be established within 10 years of the hearing.

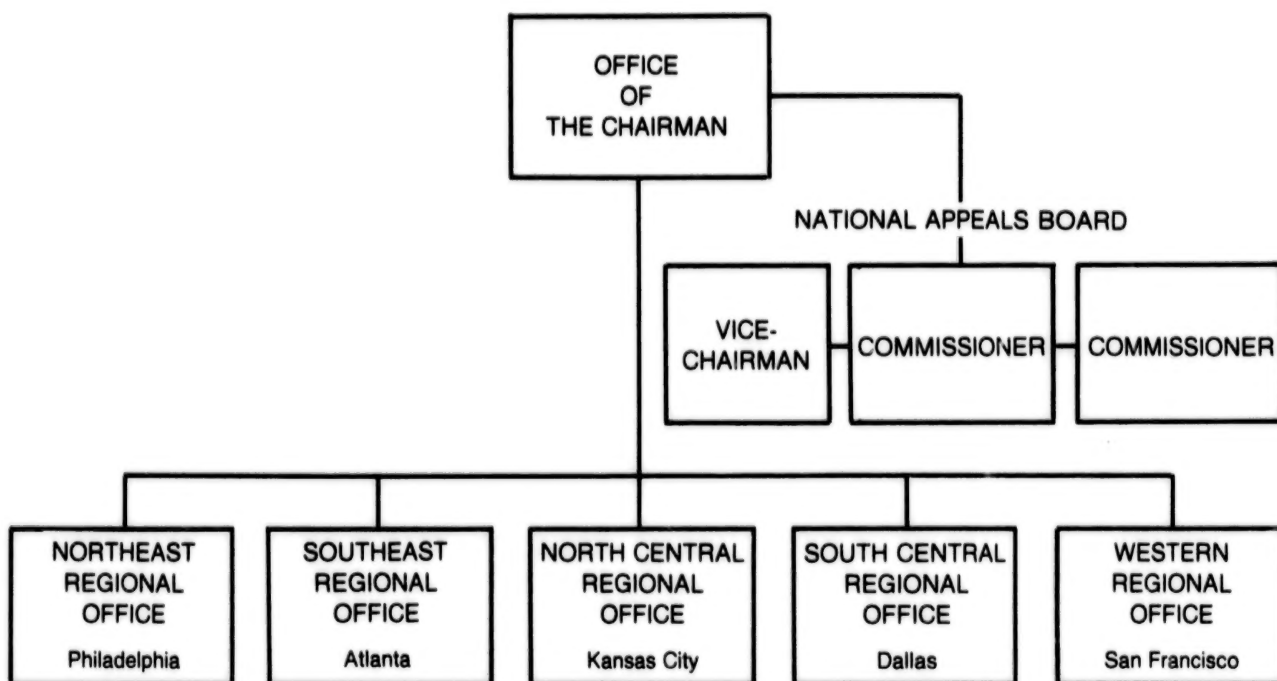
If the panel's recommendation is approved by the Regional Commissioner, the panel's proposed decision becomes effective; otherwise, the Regional Commissioner may refer the case to the National Commissioners for reconsideration.

If denied parole, the prisoner may appeal to the Regional Commissioner on both substantive and procedural grounds. If he remains dissatisfied, he may appeal to the National Appeals Board. In certain cases, the Commissioners, after a hearing by an examiner panel, assume "original jurisdiction" over a case and make the parole decision by the concurrence of three votes. Appeals of these types of actions may be made to the full Commission.

Following the initial hearing, the prisoner is scheduled for interim hearings every 18 or 24 months (depending on the length of the maximum term imposed). At this hearing, the Commission considers only those developments in the prisoner's case from the date of his last proceeding, along with his release plans. After this



## U.S. Parole Commission



review, the Commission may order no change in the previous decision or it may advance the presumptive date based on superior program achievement or other clearly exceptional circumstances or retard the date due to disciplinary infractions.

If a prisoner has committed serious disciplinary violations, the Commissioner may conduct the interim proceeding as a "rescission" hearing to determine whether the presumptive release date should be forfeited or substantially retarded.

The Commission also conducts revocation hearings to determine whether a releasee has violated the terms of his community supervision, and if so, whether he should be re-incarcerated. The Parole Commission and Reorganization Act of 1976 establishes definite time limits of 60 or 90 days for conducting these hearings, depending on whether the hearing is scheduled at the locale of the violation (or arrest) or at a federal institution.

At local revocation hearings, the alleged violator is accorded the unqualified right to retained or appointed counsel, right to

present witnesses and documentary evidence, and the right to cross-examine adverse witnesses. In institutional revocation hearings, the same procedural rights are applicable, with the exception of the right to cross-examine adverse witnesses.

The Commission is required to formally review cases of released prisoners to determine the appropriateness of terminating the sentence earlier than the maximum term imposed by the court. Two years after release on parole, and at least annually thereafter, the Commission must review the status of the parolee and determine the need for continued supervision. If continuation on parole beyond five years is contemplated, a hearing must be conducted at that time and annually thereafter if requested by the parolee.

In 1981 the Commission: conducted 14,000 parole consideration and revocation hearings; completed implementation of presumptive date procedures; and participated in the Department's review of Cuban detainees.



# Office of the Pardon Attorney

**David C. Stephenson**  
**Acting Pardon Attorney**

The President exercises the pardon power in Article II, Section 2, clause 1, of the Constitution based on formal application and the recommendation of the Attorney General.

The Pardon Attorney, in consultation with the Associate Attorney General, receives and reviews all petitions for Executive clemency, initiates the necessary investigations, and prepares the Associate's recommendation to the President. The forms of Executive clemency include pardon, commutation (reduction) of sentence, remission of fine, and reprieve.

The granting of a pardon generally is considered only after the completion of sentence and a three to five-year waiting period, depending on the seriousness of the offense. The ground on which a pardon is usually granted is in large measure the demonstrated good conduct of a petitioner for a significant period of time after conviction and completion of sentence.

All relevant factors, including the petitioner's prior and subsequent arrest record and his reputation in the community, are carefully reviewed to determine whether he has become and is likely to continue to be a responsible, productive, and law-abiding citizen. The recentness and seriousness of the offense also are considered.

Although a pardon does not expunge the record of conviction, it serves as a symbol of forgiveness and is useful in removing the stigma incident to conviction, restoring basic civil rights, and facilitating restoration of professional or other licenses that may have been lost by reason of the conviction. Unless given for that specific reason, a pardon does not connote innocence.

Commutation or a reduction in the term of a prison sentence is a restricted form of pardon that is rarely granted. A President intervenes only in the most exceptional circumstances to reduce an inmate's sentence to time already served, to a shorter term, or simply to accelerate his eligibility for parole consideration.

Remission of fine and reprieve are less common forms of clemency. A remission of fine usually is granted when further collection efforts by the government would impose an undue financial hardship. Applicants for remission must demonstrate satisfactory postconviction conduct.

A reprieve temporarily suspends the effect of a sentence. Tra-

ditionally, reprieves have been used to delay the execution of a death sentence.

It may be said generally that the President's pardoning authority is absolute and extends to all offenses against the United States, excepting only in impeachment cases. He has no authority to pardon state offenses. The decision to grant or deny a pardon is wholly discretionary with the President. The exercise of his authority may not be limited by legislative restrictions and is not subject to review by the courts. There is no appeal from a clemency decision. Although not required to do so, the President has directed the promulgation of rules governing the consideration of petitions for Executive clemency. While they are published in 28 Code of Federal Regulations 1.1 et seq., they are regarded as internal advisory guidelines for officials concerned with the consideration of clemency petitions and create no enforceable rights in clemency applicants.

## Executive Clemency Statistics

In fiscal 1981, 339 pardon petitions and 209 commutation petitions were received. President Carter granted 74 pardons and commuted the sentences of seven persons. President Reagan granted two pardons and no commutations. Of 1,022 clemency petitions available for consideration during the fiscal year, 260 were denied. During the year, the Pardon Attorney received a total of 13,530 pieces of correspondence, mailed out 16,421 items and answered 318 Congressional inquiries.

The following table represents statistics for fiscal years 1977 through 1981.

Fiscal Year	Received	Granted		Denied	Pending
		Pardons	Commutations		
*1977 . . . . .	722	129	8	300	863
1978 . . . . .	641	162	3	836	508
1979 . . . . .	710	143	10	448	617
1980 . . . . .	523	155	11	500	474
**1981 . . . . .	548	76	7	260	679

\*In fiscal year 1977, President Carter granted no pardons and one commutation. During his time in office, President Carter granted 534 pardons and 32 commutations.

\*\*In fiscal year 1981, President Carter granted 74 pardons and seven commutations. President Reagan granted two pardons and no commutations.

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# Federal Bureau of Investigation

**William H. Webster**  
**Director**

The Federal Bureau of Investigation (FBI) investigates violations of certain federal statutes, collects evidence in cases in which the United States is or may be an interested party, and performs other duties imposed by law or Presidential directive.

If a possible violation of federal law under the jurisdiction of the FBI has occurred, it will be investigated and the facts presented to the appropriate U.S. Attorney or Department of Justice official who will determine whether prosecution or further action is warranted. The FBI does not give an opinion or decide whether an individual will be prosecuted.

The overall objective of the FBI is to have a significant impact on criminal activity, to investigate civil matters in which the federal government has an interest, and to provide information to the Executive Branch relating to national security. Top priority investigative emphasis has been assigned to those areas that affect society the most—organized crime, foreign counterintelligence, white-collar crime and violent crime.

## Investigative Efforts

### Organized Crime

The goal of the FBI's Organized Crime Program during fiscal 1981 has been to reduce organized criminal activity in the United States through aggressive, innovative, and quality investigations. The FBI has identified labor-racketeering, official corruption, illegal infiltration of legitimate business, loansharking, illegal gambling, arson-for-profit, narcotics, pornography, and gangland slayings as the principal sources of revenue for organized crime groups and has therefore designated these activities as investigative priorities.

Furthermore, during 1981, the FBI and the Drug Enforcement Administration (DEA) began developing plans for closer cooperation and coordination of investigations involving the illicit trafficking of narcotics by organized crime groups. These plans involve the use of joint FBI/DEA undercover operations targeted at the flow of illicit narcotics monies, and the locating of over 300 DEA fugitives by the FBI, which, it is anticipated, will result in many violence-prone fugitives being apprehended.

During the year, FBI investigative efforts against organized crime resulted in 515 convictions, including a number of members and associates of organized crime groups. Additionally, organized crime investigations resulted in \$2,155,569 in fines and \$33,364,144 in recoveries.

Intelligence information concerning illegal gambling activity

is also gathered and disseminated to state and local law enforcement agencies on a regular basis.

Liaison with the Office of Enforcement Operations in the Criminal Division, the U.S. Marshals Service, and the Bureau of Prisons is also maintained regarding the Witness Security Program. This program remains an important tool for successful prosecution of organized crime cases.

Due to the increasing complexity and sophistication of investigations being undertaken against the various elements of organized crime, a computer system, known as the Organized Crime Information System, has been developed. When fully implemented, the system will significantly improve the FBI's ability to assess the impact of organized crime on society and will be a valuable asset to program management as well as an excellent means of enhancing the field agent's investigative abilities.

The following are examples of accomplishments of particular significance:

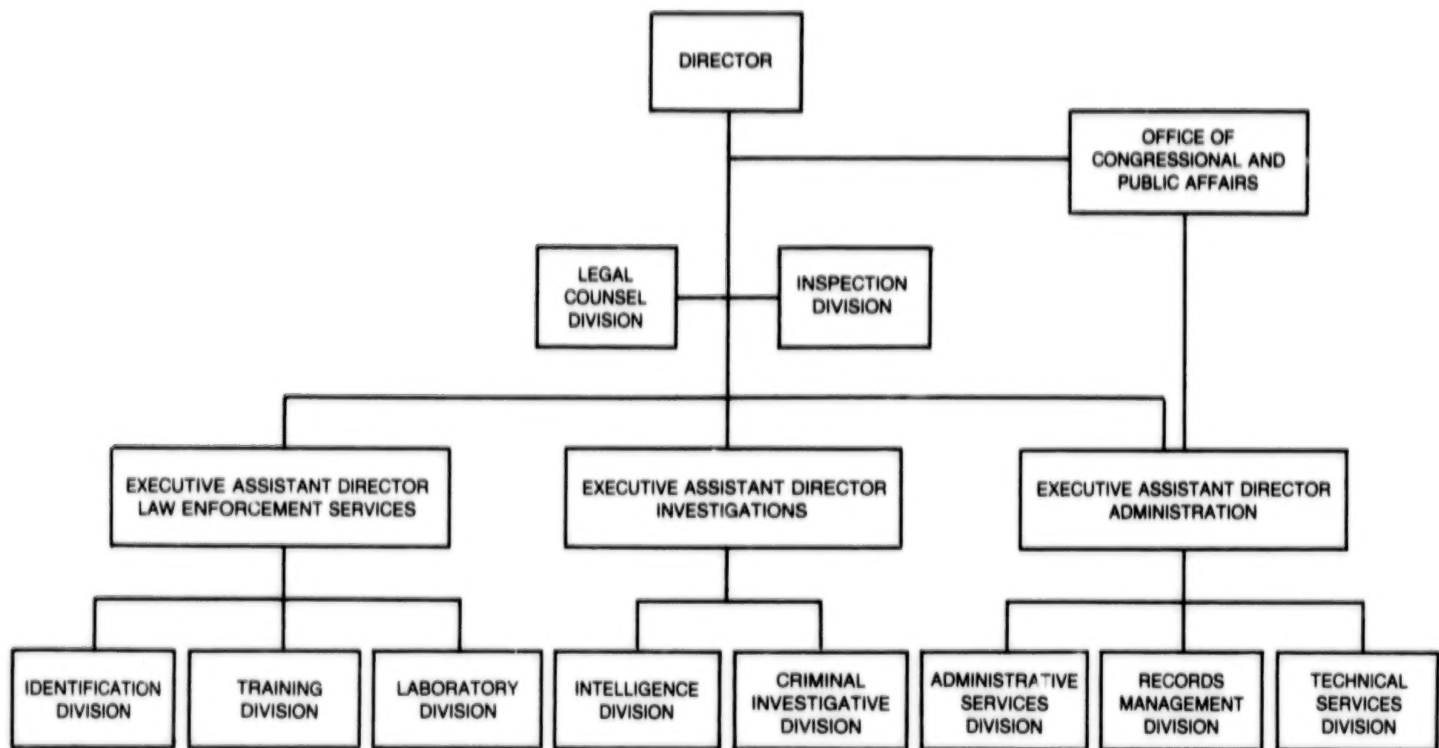
On November 21, 1980, Frank Tieri, a New York City organized crime leader, became the first defendant ever convicted of the federal crime—made possible by the Racketeer Influenced and Corrupt Organizations (RICO) Statute—of being the head of an organized crime enterprise. The testimony at the trial from several witnesses, who were themselves organized crime figures, disclosed the inner hierarchy and operations of Tieri's organized crime activities from organized loansharking and theft to extortion and murder.

On January 12, 1981, Joseph Bonanno, Sr., was sentenced to five years in jail for conspiring to obstruct justice. Bonanno, who now resides in Tucson, has long been identified by the FBI as one of the leading organized crime figures in the United States.

On April 21, 1981, John Stanfa, a Philadelphia crime figure, was sentenced to eight years' imprisonment for making false statements to a federal grand jury in Philadelphia which had questioned Stanfa about his knowledge of the murder of Philadelphia crime figure Angelo Bruno on March 21, 1980. Stanfa was Bruno's chauffeur on the night Bruno was murdered and went into hiding when Anthony Caponigro was murdered on April 17, 1981, three weeks after Stanfa had driven Caponigro to New York City to meet with two organized crime figures.

On May 6, 1981, the FBI initiated a surveillance in Brooklyn designed to effect the arrest of Alphonse Persico, a federal fugitive. The investigation led the FBI to a residence where a high-level organized crime meeting was taking place. Present at the

## Federal Bureau of Investigation



meeting were Carmine Persico, Jr., brother of Alphonse and an organized crime figure in New York, and 11 other powerful organized crime leaders. Carmine, who was on federal parole at the time, attempted to flee the meeting but was detained by FBI agents who immediately summoned Carmine's parole officer. On May 14, 1981, Carmine's parole was revoked and he was returned to federal custody to complete a previously imposed sentence.

On May 22, 1981, as the result of an FBI investigation, code named PENDORF, a federal grand jury in Chicago returned an 11-count indictment charging violations of federal laws pertaining to conspiracy in an attempt to bribe a U.S. Senator, interstate travel in furtherance of the bribery, and wire fraud against the following five individuals: Allen M. Dorfman, insurance executive with Amalgamated Insurance Agency, Deerfield, Illinois, and former consultant to the Teamsters Central States Southeast and Southwest Areas Pension Fund; Roy Lee Williams, President of the International Brotherhood of Teamsters; Joseph Lombardo; Thomas O'Malley, Employer Trustee of the Teamsters Central States Pension Fund; Andrew G. Massa, Director of Labor Relations for both Teamsters Central States Pension Fund and Health and Welfare Fund.

In June 1981, Santo Trafficante, Jr.; Anthony Accardo; Angelo Fosco, President of the Laborers' International Union of North America; and 13 others were indicted in Miami on one count of RICO conspiracy. The indictments stemmed from the

FBI's investigation of the defendants' involvement in setting up an insurance company to provide coverage to the rank and file of the Laborers' International Union of North America which necessitated payoffs and kickbacks to the Laborers' International Union of North America officials, organized crime figures, and the various consultants and administrators of the Laborers' International Union of North America funds. In September 1981, a subsequent indictment charged Raymond L. S. Patriarca; Arthur E. Coia, Secretary/Treasurer of Laborers' International Union of North America; and three others with one count of RICO conspiracy.

On July 23, 1981, a federal grand jury in Los Angeles returned a three-count sealed indictment charging Carlos Marcello, alleged organized crime leader in New Orleans; Samuel Sciortino, a Los Angeles crime figure; and Philip Rizzuto, a Kansas City organized crime figure, with conspiracy to bribe a public official, corruptly endeavoring to influence an officer of the court of the United States, and aiding and abetting. The indictment stemmed from the FBI's investigation code named BRILAB and subsequently, all three were convicted.

On August 3, 1981, Carlos Marcello was found guilty by a federal jury in New Orleans for violation of the RICO Statute. This conviction also stemmed from the BRILAB investigation. This case targeted union officials and political figures who were allegedly soliciting kickbacks and payoffs for their assistance in ob-



taining health and life insurance contracts for various employee groups.

During August 1981, the FBI initiated the overt phase of a narcotics undercover investigation code named BANCOSHARES. This investigation was dedicated to the penetration, determination of identities, and prosecution of major south Florida narcotics cartels. During the investigation, FBI undercover agents acted as narcotics proceeds brokers and successfully laundered over \$170 million in narcotics proceeds, and penetrated four of the seven targeted narcotics networks. Additionally, the following accomplishments have been realized by this investigation: 66 indictments; the seizure of 20 vehicles, seven airplanes, 26 weapons, and one boat; the seizure of four pieces of real estate, to include one 4,600-acre ranch valued at \$4,100,000; and the seizure of 10.2 kilos of cocaine and \$6 million in cash.

During 1981, the FBI expanded its investigative role to include newly emerging organized crime groups such as outlaw motorcycle gangs, narcotic cartels, and other ethnically and/or racially oriented groups. These groups are extremely violence-prone and are involved in a myriad of criminal activities.

The FBI, through its Organized Crime Program, is deeply committed to the diminution of organized crime's influence on American society. To this end, the FBI will continue to exert pressure on organized crime and its many illegal activities.

## **White-Collar Crime**

White-collar crime consists of illegal acts that use deceit and concealment rather than the application or threat of physical force or violence to obtain money, property or service; to avoid the payment or loss of money; or to secure a business or personal advantage. Perpetrators of white-collar crimes are often regarded as responsible "pillars" of their communities who occupy positions in government, industry, professions, and civic organizations. By using their positions, cunning, and guile, white-collar criminals undermine professional and governmental integrity in which the citizens have placed their trust. They are responsible for the loss of billions of dollars annually for the nation's economy.

The following offenses constitute the primary jurisdictional areas investigated by the FBI in the category of white-collar crime: Corrupt acts involving public officials, fraudulent interstate and international schemes, bribery, obstruction of justice, perjury, frauds perpetrated against federal agencies, racketeer influenced and corrupt organizations, and interstate transportation of stolen or counterfeit securities.

During fiscal 1981, approximately 22 percent of the FBI's investigative manpower was devoted to white-collar crime investigations—an effort that resulted in 3,590 convictions. Additionally, more than \$171 million in ill-gotten gains was recovered, fines of \$29 million were levied, and potential economic losses exceeding \$1½ billion prevented.

Special agent vigilance and expertise concerning white-collar crime investigations were enhanced through specialized training

programs and seminars for appropriate personnel. Special agent personnel also continued to assist and instruct a concerned citizenry regarding schemes and tactics used by white-collar criminals.

For administrative purposes and because of the similarity of criminal activity, the White-Collar Crimes Program has been divided into subprograms which address the following crime problems: Public corruption, governmental fraud, financial crimes and energy-related frauds. Descriptions of the individual subprograms are set forth hereafter with case examples to illustrate the thrust and direction of these components of the White-Collar Crimes Program.

## **Public Corruption**

The bases of FBI public corruption investigative action are abuse of office by elected and/or appointed public officials in violation of federal criminal statutes and attempts by individuals to cause public officials to abuse their offices in violation of federal criminal statutes. The FBI undertakes public corruption investigations only when information or allegations indicate that violations of federal criminal statutes within the FBI's jurisdiction may have occurred.

Among the federal statutes most often encountered in public corruption cases, under Title 18, U.S. Code, are: Section 201, Bribery; Section 1951, Extortion; Sections 1961-1968, Racketeer Influenced and Corrupt Organizations Act; Section 1952, Travel Act; Section 1341, Mail Fraud; Section 371, Conspiracy; and Section 1623(A), False Statements to a Federal Grand Jury.

While FBI investigations involve officials at all levels of government, investigative priority and emphasis are provided to those matters involving federal officials. Due to sheer numbers of local officeholders and geographic distribution, the volume of matters under investigation has traditionally involved more local and county governments.

The FBI's investigative response to public corruption allegations continues to be immediate, aggressive and thorough—utilizing the talents of the most experienced and capable agent personnel.

Public corruption investigations involve all of the traditional law enforcement techniques—interview; observation; audit; consensual monitoring, both audio and aural; court-authorized monitoring; undercover operations; gathering physical evidence; and others. Some of the techniques are used with more frequency than others in that the credibility of the government's witnesses is frequently challenged and must be supported by evidence that indicates not only an event but the circumstances in which it occurred.

Extensive media attention to public corruption investigations on both the regional and national levels illustrates and chronicles FBI successes in ferreting out those responsible for damaging the institutions that comprise our American democracy.

Under the code name ABSCAM, the FBI began an undercover operation intended to recover stolen art, counterfeit and stolen stocks, bonds, and other redeemable securities within the New York area. Shortly after inception, compelling evidence of bribery and conflict of interest violations by a number of federal, state, and local officials was uncovered. Among the results achieved from this investigation has been the conviction of one U.S. Senator, six U.S. Congressmen, three city councilmen, one federal law enforcement official, a state regulatory official, and others associated with those officials.

The recent conviction of a former governor for his part in the sale of state liquor licenses has been viewed as almost minuscule in relation to the magnitude of the investigation. The investigation was predicated upon numerous allegations of unlawful activity in the issuance of gubernatorial pardons and grants of clemency appearing in a series of media exposés. Shortly after instituting investigation, information was secured that caused a review of the awarding of numerous state contracts, in addition to the pursuit of the initial allegations. The review of state road-building contracts involving the governor's family construction business disclosed the existence of bidrigging by several national construction companies building roads in Tennessee. Convictions have been obtained in Tennessee and Virginia with continuing investigation in 14 other states.

Insidious corruption, penetrating and inflicting its financial toll upon the citizens of the State of Oklahoma, has been found to exist in each of the State's 77 counties during a recent investigation involving public officials. More than 20 officials have thus far entered pleas of guilty and there have been 13 convictions as a result of this investigation. Additionally, 157 individuals have entered into plea agreements and eight indictments remain pending.

## **Governmental Fraud**

Governmental fraud addresses criminal allegations of fraud and bribery within the programs and functions of the U.S. Government. The majority of these investigations involve the 13 departments and 57 agencies of the Executive Branch, which annually disburse billions of dollars. These funds, appropriated by the legislative branch to attain national goals and/or eliminate specific problems affecting the American standard of living and the free enterprise system, are the target of unscrupulous individuals within, as well as outside of, the government. The basic violations can be divided into two categories—those committed by individuals or entities responsible for operating the program or function and those committed by individuals and entities who either receive funds when, in fact, they are not qualified recipients or misuse the funds received.

The primary statutes used in prosecuting these offenses under Title 18 of the U.S. Code are: the Fraud Statute, Section 1001, which prohibits the submission of false, fictitious or fraudulent statements to the U.S. Government; and the Bribery Statute, Sec-

tion 201, which prohibits the offering or solicitation of anything of value to influence the official actions of a federal employee.

Invariably these investigations are extremely complex and involve extensive reviews of books and records in gathering sufficient evidence to prove the violations. In major cases of this type, significant media and public interest is present because of the general public's concern over the government's ability to properly manage itself.

Because these types of criminal activities undermine public confidence in government institutions and waste millions of dollars in taxpayers' money, they are given the very highest priority and presently require over 22 percent of the manpower resources devoted to the White-Collar Crimes Program.

Since these matters involve the programs and functions of other governmental entities, an extensive liaison program is required to ensure that information developed is disseminated to the Office of Inspector General or the equivalent at the department or agency administering the abused program or function. When FBI investigations highlight deficiencies within a program or function of another agency, this information is passed along in the expectation that appropriate changes will be made—personnel action, program changes, and/or debarment proceedings to ensure that similar abuses do not occur in the future. Dissemination of investigative results is also made to the Civil Division of the Department of Justice for consideration of civil remedies.

With the establishment of the 15 statutory Inspectors General, additional resources have been added to the war against fraud, waste, and abuse in government programs and operations. The FBI, recognizing the need to efficiently utilize available resources in such a way as to maximize impact, is attempting to enter into memorandums of understanding with each Inspector General. These agreements will clearly delineate areas of responsibility to eliminate possible duplications of effort. In most cases, the FBI will assume the role of investigating the bulk of the criminally prosecutable cases detected, thereby allowing Inspector General personnel to concentrate primarily on detecting and preventing fraud, waste, and abuse within their respective agencies.

The following examples are provided to illustrate the variety and magnitude of the investigations in the areas of governmental fraud.

APPLECORE was a joint FBI-Inspector General, U.S. Department of Agriculture (USDA) undercover investigation into the federally funded Summer Feeding Program for disadvantaged children in the State of New York. It was surfaced on February 18, 1981. To date, 20 individuals and companies have been convicted on charges of submitting false statements and conspiracy to defraud the federal government. This investigation, the overt phase of which is continuing, has revealed widespread bidrigging, kickbacks, and fraud within the USDA Summer Feeding Program. Investigative results are presently being used by USDA to make drastic changes in this and related programs.



MEDFRAUD, a Los Angeles FBI undercover investigation, resulted in 42 convictions, including doctors and laboratory owners, and revealed widespread kickbacks and overbillings in the Medicare and Medicaid programs of California. FBI undercover agents have provided testimony before a Congressional committee seeking ways to legislate safeguards into the various federally funded health care programs.

## Financial Crimes

Criminal violations generally categorized as financial crimes are those involving schemes to defraud individuals and institutions by manipulating events, documents, and/or large sums of cash. Although variations of these schemes are endless, the most prevalent include embezzlements, advance-fee swindles, franchise swindles, pyramid schemes, land frauds, check kites, and stock manipulations. Federal statutes frequently utilized in these types of investigations, under Title 18, U.S. Code, are Bank Fraud and Embezzlement, Sections 656, 657, and 1014; Fraud by Wire, Section 1343; Interstate Transportation of Stolen Property, Section 2314; Conspiracy, Section 371; Racketeer Influenced and Corrupt Organizations, Section 1961; and Bankruptcy, Section 151.

Investigative and prosecutive guidelines have been coordinated with U.S. Attorneys throughout the United States to effectively apply existing resources commensurate with regional needs. Emphasis is directed toward corrupt bank officials and cases of high dollar loss. Whenever possible, less significant violations are referred to local authorities.

In the area of Bank Fraud and Embezzlement, 1,709 individuals were convicted during fiscal 1981. Noteworthy investigations conducted since January 1981, resulted in the conviction of a Houston banker who embezzled over \$14 million; and the indictment of a boxing promoter and others who are alleged to have conspired to defraud a Los Angeles bank of \$21.3 million by manipulating bank accounts.

Major investigative efforts, including undercover investigations, are currently underway to ferret out "confidence men" and seemingly legitimate businessmen who violated federal statutes in pursuit of investment schemes and other frauds. The increased use of Attorney General authorized body recorders by undercover FBI special agents and by cooperating witnesses has been very successful in establishing intent to defraud in cases of this nature. One undercover operation involving two special agents in Dallas accounted for convictions in four cases, and prosecutions initiated in 13 more cases during the period of March 1, 1981, to September 1, 1981. Those charged were involved in a variety of "confidence" schemes.

Many investigations of economic crimes are extremely time-consuming and complex due to the extensive number of victims, complex audit trails, and extensive mobility of perpetrators who frequently move throughout the United States and foreign countries in furtherance of their business deals. One ongoing investi-

gation, for example, involved the surveillance of an individual who conducted business deals in Colorado, California, and New York in a period of two days.

## Energy Fraud

Subsequent to the 1973 Arab Oil Embargo, Congress enacted laws which created a multitier pricing system regulating the sale price of crude oil. The multitier pricing system caused a large gap between the price at which old crude oil and new crude oil could be sold. The terms old and new do not refer to the age of the crude oil, but to the quantity of crude oil produced from wells that were in existence prior to the enactment of the multitier pricing system. The purpose of these laws was to encourage additional exploration for domestic crude oil.

The Department of Energy was given the responsibility of implementing and enforcing these new laws. The FBI jurisdiction in oil fraud matters lies within the traditional statute regarding fraud violations. In conducting oil-related fraud investigations, the FBI's special agents and the prosecutors have noted a fine line separating honest mistakes and misinterpretation of complicated regulations from those cases wherein the subjects intentionally falsify documents for the purpose of artificially raising the crude oil price.

The multitier pricing system has provided an excellent vehicle to defraud consumers by filing false certifications with the Department of Energy. In the midseventies, the difference in price of old oil and new oil was approximately six dollars a barrel. Since 1979, the difference in price has risen dramatically. Therefore, a buyer can now make even greater profits by purchasing old oil and falsely certifying that oil as new oil and reselling it to a refinery at the current new oil price. The schemes which the FBI and the Department of Energy have uncovered are complicated in that the same crude oil is resold many times through various resellers. Each reseller obtains a profit for himself per barrel and resells the oil to another buyer. A large number of resellers merely formed a "daisy chain" for the purpose of inflating the crude oil prices.

A conviction was recently obtained in federal district court in Tulsa in which an oil company was charged with the miscertification of old oil as new oil with an estimated unlawful profit of \$7,480,000. The subjects in this case were charged in a 16-count indictment including RICO, fraud by wire, mail fraud, and conspiracy, and were convicted on all counts. The company was ordered to forfeit a seven-story, \$2 million office building under the RICO Statute.

In another case involving the miscertification of oil, the corporation pled guilty to two counts of submitting false statements to the government and agreed to pay a civil penalty of \$3 million and to refund \$17 million to the Department of Energy. The president of the company also pled guilty to a criminal information charging him with two counts of violating the Department of En-

ergy pricing regulations, a misdemeanor, and he was fined \$40,000 on each count.

FBI investigations in the area of oil-related frauds have resulted in 10 convictions and the recovery of more than \$25 million.

The FBI has recently become involved in another area of oil-related fraud involving the leasing of oil wells by the federal government. The Department of Interior, Geological Survey, is responsible for managing the issuance of federal oil leases to oil companies for the production of oil from the federal lands. Investigations by the FBI and the Department of Interior have resulted in the indictment of six individuals, five of whom pled guilty to charges of mail fraud, conflict of interest, theft of government property, and conspiracy. A former Geological Survey employee was among those pleading guilty. The most publicized of this group of investigations involves an alleged multimillion dollar oil theft from the Wind River Indian Reservation in Wyoming.

## Foreign Counterintelligence

The Foreign Counterintelligence Program continues to focus on the long-term threat posed by hostile intelligence services. Part of the effectiveness of this program is derived from the steady, long-term, and retrievable accretion of counterintelligence information which can often have a direct bearing on today's operations. Essentially, it is the operational know-how and effective resource allocation which form the major strengths the FBI brings to this field. In addition to long-term considerations, the management of the Foreign Counterintelligence Program has to look to current and evolving international events in allocating its resources. The large scale immigration of nationals from the USSR and Cuba continues to draw on resources. The present situation in Poland may affect the program as any drastic action taken in that country could have enormous foreign counterintelligence implications.

The Soviet intelligence services, because of their size and influence within the Soviet establishment, represent the most acute threat to the security interests of the United States. The Eastern European and Cuban services by themselves and because of their ties to the Soviet services represent significant threats.

The long-term aspect of foreign counterintelligence is amply demonstrated in the case involving Joseph George Helmich, Jr., a former Army warrant officer, who was convicted for providing the Soviets information pertaining to worldwide military and diplomatic communications in the mid-1960's. Helmich was paid approximately \$131,000 by the Soviets. On October 16, 1981, he was sentenced to life imprisonment.

The scope of hostile intelligence services' activities in the United States and the threat posed to United States national security by those hostile services require the commitment of the full resources of this program.

## Terrorism

The Terrorism Section of the Criminal Investigative Division has the dual responsibilities of preventing terrorist acts through intelligence-type investigations and responding through criminal investigations when terrorist acts are committed.

In fiscal 1981, the Terrorism Section fulfilled its responsibilities by achieving significant accomplishments in its programs to combat the activities of the major terrorist groups. The most notable accomplishments are described below.

In December of 1980, seven Croatian National Resistance members were arrested for their involvement in a bombing and an assassination plot. Five of these individuals were convicted in March of 1981. Their plans had included the killing of a political foe and the bombing of a meeting attended by 100 people celebrating a Yugoslav holiday. This case was significant because it demonstrated how intelligence information gathered on a terrorist group can result in the prevention of terrorist activity.

In June of 1981, nine other members of the Croatian National Resistance were arrested and indicted on a variety of federal charges as the result of a RICO-Terrorism investigation. This investigation was in response to a murder, arson, bombing and extortion campaign waged by these individuals over the past several years.

The combination of these two cases constituted a severe blow to the operational capability of the Croatian terrorist movement.

The Terrorism Program also made progress in curtailing the activities of the Irish Republican Army in the United States. In an operation directed at Irish Republican Army gun smuggling, FBI agents arrested three Irish Republican Army members and seized a large quantity of arms and ammunition destined for Northern Ireland. FBI assistance to the Immigration and Naturalization Service resulted in the identification, arrest and deportation of three other Irish Republican Army activists who were in the United States illegally.

The activity in the United States of the agents, representatives, and supporters of those Middle Eastern countries that advocate terrorism continued to be a major concern. The FBI closely monitored the activity of these groups and was able, through swift and effective reaction, to combat their use of terror and intimidation in the United States. The following examples are indicative of the FBI's response to Middle Eastern terrorism:

As a result of investigation of the assassination of Iranian dissident Ali Akbar Tabatabai, nine members of the Islamic Guerrillas in America have been indicted and convicted on a variety of federal charges; three Iranian students were arrested and convicted for attempting to purchase automatic weapons from an undercover FBI agent; an anti-Khomeini Iranian was convicted and sentenced to serve 50 years for bombing a convention of pro-Khomeini students; a former member of the U.S. Army Special Forces was arrested for the attempted assassination of an outspoken critic of Colonel Mu'Ammar Qadhafi of Libya and investiga-



tion into the nature and extent of the Libyan terrorist network is continuing; and information developed by the FBI that a Jordanian citizen was a Popular Front for the Liberation of Palestine operative resulted in the issuance of an arrest and deportation order for him by the Immigration and Naturalization Service. The type of effective response depicted by these examples reduces the attractiveness of the United States as a scene for violent or illegal activity by international terrorists.

Other pertinent accomplishments by the FBI in the field of terrorism include the prevention of a planned sabotage and assassination raid on the island of Cuba by the arrest of seven members of the anti-Castro Cuban terrorist group, Alpha-66; the conviction of a key member of the Cuban Nationalist Movement for perjury relative to his testimony before a grand jury in New York; the conviction of nine individuals on neutrality, gun control and munitions control statutes because of their involvement in a plot to attack the island of Dominica and overthrow the government; and the arrest of a prominent member of the Cuban Nationalist Movement on passport violations and local charges after a search warrant was executed at his residence, where an illegal passport, weapons, and drugs were found.

## Civil Rights Violations

The Civil Rights Program of the FBI investigates matters that involve the actual or attempted abridgements of rights provided to citizens and inhabitants of the United States under the Constitution and laws. The primary objective of this program is to enhance and protect those rights through expeditious investigation of matters within FBI jurisdiction. Both civil and criminal matters are investigated in close coordination with the Civil Rights Division of the Department of Justice.

During fiscal 1981, a total of 29 misdemeanor convictions and 27 felony convictions were obtained in civil rights cases investigated by the FBI.

In March 1981, Joseph Paul Franklin was convicted and sentenced to two life terms for shooting two black joggers in a Salt Lake City public park in violation of their civil rights. In Galveston Bay, Texas, an investigation was conducted into possible violations of the rights of Vietnamese fishermen by members of the Ku Klux Klan. Under civil rights statutes, the FBI actively cooperated with local authorities in Buffalo and New York City in connection with a series of murders and attempted murders of blacks. As a result of these combined investigative efforts, an individual has been locally charged with four counts of murder and two counts of attempted murder in Buffalo, and one count of murder and attempted murder in New York City. An extensive investigation was conducted in connection with alleged violations of the rights of Cuban refugees, through use of force, by Immigration and Naturalization Service detention officers at the Fort Chaffee, Arkansas, Refugee Relocation Center which resulted in indictments of five detention officers.

Investigations into alleged abuses of the civil rights of migrant farm workers under the Involuntary Servitude and Slavery Statutes were also conducted. One conviction was obtained in North Carolina during fiscal 1981. Also in North Carolina, a migrant crew leader and three assistant crew leaders were indicted by a federal grand jury which charged them with holding migrant farm workers in a state of involuntary servitude. The crew leaders were also charged with conspiracy to injure, oppress, threaten, and intimidate the workers.

## General Property Crimes

Property crime continues to account for 90 percent of all reported crime in the United States, with an increase of 55 percent between 1971 and 1980. The FBI Property Crime Program includes armed robbery and burglary of jewelry, precious metals, artworks, and other valuable property, and thefts of automobiles, trucks, aircraft, and heavy construction equipment. These crimes often include acts of violence in either the commission of the crime or the subsequent trafficking in stolen property. In addition, the proceeds from stolen property are often utilized to purchase narcotics or, as in the case of stolen aircraft, to provide a means of transporting narcotics.

The federal presence in the investigation of this type of criminal activity continues to be essential due to the mobility of both property and individuals across state boundaries which presents jurisdictional, investigative, and prosecutive problems which may be impossible for local authorities to overcome. These investigations have also established a direct connection between property crimes and organized crime, which often results in public corruption.

Described below are some of the many examples of the significant accomplishments in the General Property Crimes Program:

In April 1981, the FBI's office at Brooklyn/Queens, New York, culminated a four-year investigation with the conviction of five organized crime figures and their associates for operating a commercial auto theft operation which utilized counterfeit documents to disguise the true identity of vehicles. This highly structured and sophisticated criminal organization was responsible for over \$2 million worth of stolen autos and was described by the presiding judge as the largest car theft ring he had seen in his 21 years on the federal bench.

The Cincinnati Field Office, in cooperation with the Hamilton County, Ohio, Sheriff's Office and the Cincinnati Police Department, concluded an 18-month undercover operation targeted toward "fences" and burglars operating in southeastern Ohio, northern Kentucky, and southwestern Indiana. This investigation resulted in the arrest of 157 individuals and the recovery of stolen property in excess of \$2 million.

During April 1981, the Washington, D.C., Field Office, in close cooperation with the Washington Metropolitan Police Department, concluded an undercover operation targeted against "fences" of stolen precious metals who cloaked their illegal ac-

tivities with legitimate businesses dealing in secondhand property. Following the arrest of 21 individuals and the recovery of 7,500 pieces of stolen property valued at \$2 million, the property was placed on public display. During this highly publicized display, 1,388 burglary victims viewed the property, with 392 victims identifying one or more items.

During fiscal 1981, the general property crimes effort resulted in the conviction of 1,311 persons, 895 arrests, and 135 subjects located. Stolen property in the amount of \$139,249,758 was recovered, \$887,972 in fines was assessed, and \$595,837,201 in potential economic loss was prevented. One indication of the magnitude of the property crime problem is that during 1981, motor vehicle thefts reported to the FBI's National Crime Information Center were in excess of 80,000 vehicles per month with a monthly loss value exceeding \$310 million.

## Personal Crimes

The Personal Crimes Program of the FBI addresses violations of federal criminal statutes that involve the common characteristics of threatened or actual personal injury or loss of life. These crimes, which include bank robbery, extortion, kidnaping and skyjacking, frequently have considerable impact on the communities and individuals affected because of their violent nature, the high profile of their victims, and the possibility of substantial monetary losses. The objective of this program is to reduce the impact of personal crime victimization by conducting logical investigations to identify, locate, and apprehend criminals involved, and by providing support to U.S. Attorneys. FBI investigative activity in this program during fiscal 1981 resulted in 1,284 arrests and 2,038 convictions, 96 percent of which were for felony offenses, and 91 percent resulted in confinement for the offender. In addition, more than \$13.3 million worth of stolen and illegally possessed property was recovered during FBI investigations and approximately \$272,000 in fines levied.

## Bank Robberies And Related Crimes

Violations of the Federal Bank Robbery and Incidental Crimes Statute include robberies, burglaries, and larcenies committed against federally insured banks, savings and loan associations, and credit unions. During fiscal 1981, bank robberies and related crimes reached a record level, exceeding 7,700 offenses. Firearms were used in approximately 51 percent of the estimated 6,950 bank robbery offenses. Narcotics users were found to be involved in approximately 43 percent of the cases occurring during fiscal 1981 that have been solved. The FBI provides an investigative response to each reported violation.

On April 22, 1981, the largest bank robbery in the history of the United States occurred when three masked and armed bandits took more than \$3.3 million from a Tucson bank. Intensive investigation by FBI agents in Tucson developed as prime suspects three individuals who were wanted for jewelry store robberies in Arizona and California and other crimes. One subject was ar-

rested in June 1981, by FBI agents in Des Moines, and approximately \$962,000 was recovered. This subject has since pled guilty to this and other crimes and was sentenced to a 20-year prison term. The remaining two subjects were arrested in September 1981, by FBI Agents in Denver. Convictions in federal court for bank robbery and related crimes totaled 1,715 during fiscal 1981. Investigations of extortionate demands against financial institutions are conducted by the FBI under provisions of the Hobbs Act. There were 25 convictions for these kidnap/extortion style offenses during the year.

## Extortion

Victims of extortionate letters and/or telephone calls are faced with demands for money or other items of value under threat of physical injury, kidnaping, death, or property damage. FBI investigative efforts are directed toward identifying the originators of extortionate demands and preventing these individuals and/or groups from following through on their threats. Convictions for violating the federal extortion statute numbered 68 in fiscal 1981. Extortionate demands against commercial institutions engaged in interstate commerce are investigated by the FBI under the provisions of the Hobbs Act.

A year-long investigation into the attempted extortion of a Nevada casino was brought to a successful conclusion in August 1981, with the arrest of six individuals in California. This case drew nationwide attention at its inception in August 1980, when an improvised explosive device was placed in a Nevada casino and a \$3 million payoff demanded. Attempts to comply with the payoff instructions failed and a subsequent attempt to neutralize the explosive device triggered its explosion, resulting in extensive damage to the casino complex.

Extended investigative efforts also resulted in the indictment of two persons at Jackson, Mississippi, and their subsequent arrest in connection with the mailing of over 360 extortionate letters to 200 major corporations and their executives in the United States during a 10-month period in 1975. Among these letters were 21 letter bombs, one of which exploded and injured several mailroom employees of a New York City investment firm. Additionally, contaminated foodstuffs and medicinal products were found in connection with this investigation. The monetary demands associated with these letters exceeded \$1.28 billion, none of which was paid.

FBI investigations of extortions against commercial institutions under the Hobbs Act resulted in 25 convictions during fiscal 1981.

## Kidnaping

The FBI's primary concern in kidnaping situations is always the safe return of the victim. After all efforts have been expended to ensure this objective, the identification, arrest, and prosecution of the persons responsible are aggressively pursued. Kidnaping



investigations often require extensive and extended manpower commitments, a commitment the FBI recognizes and provides. Since kidnappings also involve violation of various local statutes, violators can find themselves charged at either or both the federal and local levels on the basis of FBI investigation.

In November 1980, the Attorney General authorized a preliminary kidnapping investigation into the disappearance of 15 children in the Atlanta area over a 16-month period. Subsequently, over the next six months, 14 more children and young adults disappeared. The FBI's major case investigation team in Atlanta devised and implemented, with the assistance of the Atlanta Police Department, a surveillance of bridges in the Atlanta area and a prime suspect was developed. In June 1981, the Atlanta Police Department, acting on information developed during the bridge surveillance and from subsequent FBI investigation, arrested this individual who has since been indicted by a state grand jury for the murder of two of the victims.

During fiscal 1981, federal kidnapping convictions totaled 70.

#### **Assaulting or Killing Federal Officers or Other Government Officials**

The FBI has investigative responsibility for assaults committed against certain federal law officers, members of Congress, the Vice President, and the President, among others.

On March 30, 1981, a lone gunman fired six shots at President Ronald Reagan in Washington, D.C. Wounded during this incident were President Reagan, Presidential Press Secretary James Brady, a U.S. Secret Service Agent, and an officer of the Washington Metropolitan Police Department. The gunman was immediately subdued, taken into custody, and charged with the attempted murder of the President, assaulting a federal officer, and other crimes.

Extensive investigation continues into the 1979 assassination of U.S. District Judge John H. Wood in San Antonio.

In another major investigation, an individual indicted in federal court in connection with the 1978 ambush/murder of U.S. Congressman Leo J. Ryan in Port Kaituma, Guyana, was returned to the United States after being expelled from Guyana. This case is presently awaiting retrial in San Francisco after a first trial ended with the jury deadlocked.

In fiscal 1981, investigations under these and related statutes resulted in 75 convictions.

#### **Skyjackings and Related Crimes**

Eight attempted and actual aircraft skyjackings occurred during fiscal 1981, involving eight commercial aircraft. Successful resolution of these types of crisis situations, which often involve the taking of numerous passengers and crew members as hostages, requires close coordination and teamwork among the FBI, Federal Aviation Administration, airport authorities, airline industry, and local law enforcement. In addition to its skyjacking investigative responsibilities, the FBI also investigates related

crimes aboard aircraft, such as furnishing false information, interfering with flight crew members, and carrying weapons aboard aircraft.

Of particular significance was the return of two air piracy subjects to the United States from Cuba on September 18, 1980. The subjects, who skyjacked a Delta Airlines flight over South Carolina to Cuba on September 17, 1980, were subsequently convicted of air piracy. Since that time, air piracy incidents in which the aircraft was diverted to Cuba have significantly decreased.

The FBI continues to encourage a common strategy approach to the problem of air piracy. In keeping with this objective, FBI field divisions are required to periodically update contingency skyjacking plans.

Investigations of crimes aboard aircraft by the FBI during fiscal 1981 led to 55 convictions in federal court.

#### **Fugitive Matters**

During the year, 1,198 FBI unlawful flight fugitives were arrested or located. FBI resources in this area are directed toward the apprehension of individuals wanted for violent crimes such as murder, manslaughter, rape, robbery, or aggravated assault; for crimes resulting in the loss or destruction of property valued in excess of \$25,000; and for crimes involving substantial narcotics trafficking. An integral part of the FBI's efforts to effect the timely apprehension of wanted persons is the "Ten Most Wanted Fugitives" Program, and four "Top Ten" fugitives were apprehended during the year.

The FBI and DEA are currently perfecting various avenues of cooperation in enforcement efforts against major drug offenders and traffickers. It has been determined that the FBI can be of immediate and significant assistance to DEA by assuming a portion of DEA's fugitive workload. During September 1981, DEA referred 295 fugitive cases to the FBI for investigation. The subjects of these cases are Class I and Class II violators for whom federal warrants are outstanding. The FBI initiated investigation to locate and apprehend these fugitives in October 1981.

The Department of Justice referred 132 Selective Service Act cases to the FBI for investigation shortly before the end of the fiscal year. The subjects of these cases are individuals who are suspected of willfully failing to register. Each case is coordinated closely with the appropriate U.S. Attorney's Office. Although the subjects of these cases are not fugitives, enforcement of the statute is administered within the Fugitive Program.

#### **Applicant Investigations for Other Agencies**

The FBI continues to conduct personnel background investigations concerning persons who will occupy important and sensitive positions in the federal government. This work is done pursuant to various statutes, executive orders, departmental orders, and agreements established with the Attorney General's approval. These inquiries are instituted upon written requests from

such government entities as the White House, Department of Justice, Department of Energy, Nuclear Regulatory Commission, Office of Personnel Management, Administrative Office of the United States Courts, and certain Congressional committees.

With the advent of the new Administration in January 1981, a considerable number of expedited inquiries were successfully undertaken to assist the White House in fulfilling its responsibilities for making appointments to high-level positions throughout the Executive Branch. Altogether, during 1981, 4,326 individuals were investigated by the FBI under the overall program.

## **Cooperative Services Training Division**

The FBI Academy at Quantico, Virginia, is the focal point of all the Bureau's training programs. The Bureau offers field police training programs throughout the country which are supervised and coordinated by the Training Division.

Two of the Academy's most important programs are New Agents' Training and In-Service Training programs, designed for FBI field agents. Another major program is the FBI National Academy which trains mid-level and senior police administrators. Since its foundation, the FBI National Academy program has graduated 15,393 municipal, state, and federal officers. Other major programs include the National Executive Institute for police executives of major departments, the Law Enforcement Executive Development Seminars for police executives of medium-sized agencies, the Senior Executive Program for FBI executives, and the Executive Development Institute for FBI mid-level managers. Other programs reflect the profession's concern for significant law enforcement training needs.

During the past year, 9,827 criminal justice personnel received training at the Academy. This includes 4,052 agent personnel, 994 FBI support employees, and 4,781 police officers. A total of 339 schools, symposia and in-service classes, not including new agents' classes, were offered.

The most comprehensive course offered at the Academy is the 15-week training program for newly appointed agent personnel. A total of 176 new agents entered on duty and graduated from the Academy during fiscal 1981.

During the fiscal year, 3,876 veteran field agents attended 154 in-service schools. Training in white-collar crime, computer crime, and corruption was given to 1,776 of them. Other law enforcement subject areas emphasized were organized crime, management aptitude, and management development. Thirty-nine In-Service Training programs were attended by 994 FBI support personnel.

During fiscal 1981, the FBI National Academy, which provides 11 weeks of advanced instruction to career members of the law enforcement profession, held four sessions and graduated 998 officers. The University of Virginia accredits both the National Academy's undergraduate and graduate courses.

The Academy conducted specialized schools and courses dealing with a broad range of police-related topics, such as Management for Law Enforcement, Police Personnel Management, Leadership, Management Planning and Budgets, Police Labor Relations and Collective Bargaining, Human Resource Development in Education and Training, Effective Communications, Hostage Negotiation, Terrorism and Counterterrorism, Death Investigations, Interpersonal Violence, Firearms and related subjects, and Sexual Exploitation of Children. During fiscal 1981, the Academy presented 142 special schools attended by 3,783 law enforcement officers.

In addition to classroom training, Academy instructors provided comprehensive research on subjects such as psycholinguistics and hypnotic interviewing techniques. Members of the Behavioral Sciences staff furnished 167 personality profiles of criminals involved in serious personal crimes. Research information was also furnished on hostage negotiation, crisis management, and special events planning. Training and operational support for the Bureau's aviation program were provided by the FBI Academy staff.

Among the many conferences, symposia, and seminars offered to the law enforcement community during fiscal 1981 were:

- Advanced Explosives Recertification Seminar (34 attendees).
- American Society of Crime Laboratory Directors Symposium, held in the new Forensic Science Research and Training Center and attended by 143 crime laboratory directors.
- Arson Police Investigators School (21 attendees).
- Crime Laboratory Development Symposium (155 attendees).
- Fourth International Symposium on Terrorism, presented to 170 top federal, state, and local law enforcement officials, featured distinguished lecturers from foreign countries.
- Investigative Techniques of Computer-Related Crimes, a four-week computer fraud program attended by 29 FBI special agents.
- Uniform Crime Reporting Symposium (132 attendees).

Agents trained as police instructors are assigned in the FBI's 59 field offices and serve as the driving force behind the FBI's field training program. During fiscal 1981, they provided 60,066 hours of instruction while participating in 4,801 law enforcement schools attended by 147,422 criminal justice personnel.

Instructors from FBI Headquarters, in support of the field program, conducted 300 specialized schools in a wide variety of subjects such as Forensic Science, Applied Criminology, Identification Matters, Executive Development, and Uniform Crime Reporting.

## Laboratory Division

The FBI Laboratory is one of the largest forensic science laboratories serving law enforcement today. Since its inception nearly 50 years ago, the FBI Laboratory has been, and will continue to be, dedicated to the maximum utilization of physical evidence in support of the nation's criminal justice system. To keep pace with the increasing and often exigent demands of modern law enforcement, many scientifically educated men and women have been further trained in a variety of forensic science disciplines. Assisted by competent technicians and an array of the most modern equipment and instrumentation, these experts apply their knowledge to assist in the successful solution of thousands of investigative and prosecutive matters annually.

The FBI Laboratory, encompassing many highly specialized disciplines, is divided into three major sections: Document, Scientific Analysis, and Special Projects. These sections are subdivided into smaller units, each of which performs a variety of related examinations. This enables each unit to concentrate on a rather narrow area of expertise to ensure that the most comprehensive examinations are performed on the evidence submitted.

The work of the Document Section deals with scientific examinations of physical evidence involving handwriting and hand printing, ink and paper, obliteration and alteration of documents, shoe prints, and tire treads. This section also translates and interprets a wide variety of written and spoken foreign language material, examines evidence in gambling cases, conducts cryptanalytic examinations of secret/enciphered communications, and manages the FBI Polygraph Program.

The Scientific Analysis Section is composed of eight units which handle a variety of highly specialized examinations in areas such as chemistry, toxicology, elemental analysis, explosives, firearms, toolmarks, paints, plastics, polymers, hairs, fibers, mineralogy, metallurgy, blood, and others.

The services provided by the Special Projects Section are helpful to both the investigator and prosecutor. The craftsmen, artists, and photographers who work in this section provide unique services and products. These include concealment devices, crime scene surveys, composite drawings of unknown subjects, and intelligence gathered in antiterrorism, criminal, and security matters. Assistance to the prosecutor includes a wide variety of visual aids, such as charts and models, to be used as demonstrative evidence in court. The Special Projects Section also designs and fabricates commemorative plaques and medals, environmental graphics, and public displays related to the FBI's mission. This section is also responsible for all photographic processing, both black and white, and color, for the Department of Justice in Washington, D.C., as well as all FBI offices. Throughout fiscal 1981, over 1,760,000 prints, slides, and other photographic items were processed.

The FBI Laboratory provides its services to federal and non-federal agencies through two broad programs, the Forensic Ser-

vices Program and the Forensic Research and Training Program.

Through the Forensic Services Program, the Laboratory provides technical assistance, forensic examinations, and expert court testimony to both federal and nonfederal law enforcement agencies. During fiscal 1981, the Laboratory Division performed 910,810 scientific examinations on nearly 175,000 specimens of evidence. Approximately 34 percent of all requests for examinations received were submitted from state, county, and municipal law enforcement agencies. Of the 66 percent remaining, requests from FBI offices accounted for 64 percent while other federal agencies were responsible for two percent of the submissions. Laboratory examiners responded to 955 testimony commitments throughout fiscal 1981 spending over 2,000 workdays in courts of various jurisdictions throughout the country.

Many examinations were made in cases that received national attention. Of most prominence was the March 30, 1981, attempt on President Reagan's life. Laboratory personnel were on hand at the crime scene moments after the shooting to lend technical support to investigators from the FBI's Washington Field Office who coordinated the crime scene investigation. Evidence obtained from this and other phases of the investigation necessitated the involvement of 16 Laboratory units to perform a wide variety of scientific examinations. Several hundred Laboratory hours have been expended thus far on this case, and the investigation is continuing.

Laboratory personnel are currently involved in another particularly noteworthy case. On August 26, 1980, a large and very heavy improvised explosive device was wheeled into Harvey's Resort Hotel and Casino, Stateline, Nevada. A demand note was left with the explosive device calling for a payment of \$3 million. Subsequently, an attempt to render the device safe by Explosive Ordnance Disposal personnel failed, resulting in the explosion of the device with extensive damage to the casino. Explosive experts from the FBI Laboratory were called to supervise the crime scene processing which continued until October 6, 1980.

Continuing emphasis was placed on this case throughout the next 12 months with Explosives Unit personnel participating in many facets of the investigation. In August 1981, arrests and searches, which produced additional items for examination, were effected. Prosecution is pending and Laboratory explosives experts are expected to testify at great length about the device and construction techniques employed.

A third matter of national interest was the public corruption case known as ABSCAM. Laboratory personnel assigned to the Special Projects Section provided vital assistance during the prosecution phase of this case. The charges of political corruption, bribery, and conspiracy required extensive vital display in the form of charts and scale models. The task of describing to the court the methods of surveillance and monitoring of the meetings that occurred in Northwest Washington, D.C., was made much easier through the use of a precisely accurate three-dimensional scale model. Large two-dimensional charts were also furnished.



In addition, charts were prepared to graphically illustrate a record of meetings and telephone conversations between the coconspirators. Specially prepared calendars of calls and meetings, using color coding to show a chronological record of events that were monitored, facilitated prosecutive efforts.

The FBI Laboratory engages in an ongoing Research and Training Program to improve examination techniques and to implement the latest technological advances in examination procedures. Such newly identified procedural refinements are incorporated into the Laboratory training programs to further enhance the professionalism of the entire forensic science community.

The most noteworthy recent research project involves the determination of the sex of an individual from a dried bloodstain using radioimmunoassay of testosterone, progesterone, and estradiol. Of 114 bloodstains (60 female and 54 male) examined, 67 percent were suitable for this type of analysis with an accuracy of 100 percent. FBI Laboratory personnel are currently being trained in this technique.

Throughout the year, the FBI Laboratory's Forensic Science Training Program offered various scientific courses to state and local law enforcement personnel as well as federal. These courses are designed to enable the law enforcement community to make the maximum use of physical evidence in the successful investigation and prosecution of crimes and to decrease the dependence of state and local law enforcement agencies on federal facilities. In addition to this classroom training, the Laboratory hosted its

attendance at this symposium included representatives of the United Kingdom, French, Belgian, and West German law enforcement organizations who, together with the United States and Canada, vowed a more meaningful exchange of up-to-date forensic science techniques and methodology. The Laboratory is continuing with efforts to foster international interest in this field so important to today's criminal justice system.

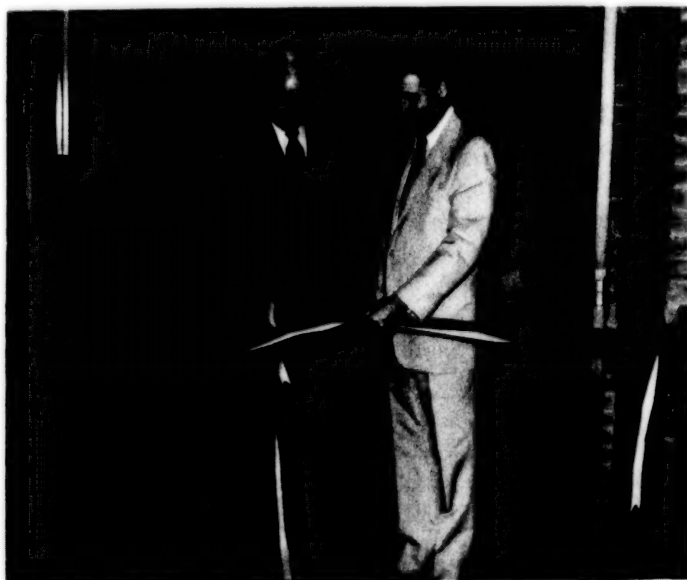
Of a related nature, the Forensic Science Research and Training Center located at the FBI Academy was formally opened and dedicated on June 16, 1981. This complex is now staffed with FBI Laboratory personnel who are scientists trained in various key forensic science fields. This unique facility houses both research and training laboratories and classrooms under one roof and serves to meet the needs of the forensic science community by providing an outstanding environment for practical "hands-on" training and applied research. The FBI Laboratory continues to place high emphasis on the training of state and local crime laboratory personnel in an effort to develop a broader range of services at that level.

## Identification Division

Fingerprint card submissions to the Identification Division for fiscal 1981 increased eight percent over the previous year as 6,848,043 cards were received. Receipts averaged 27,392 fingerprint cards per workday. The division was in possession of over 175 million fingerprint cards at the end of the fiscal year.

The processing of fingerprint cards and related data submitted by 17,826 federal, state, and local agencies is the most important responsibility of the division. During fiscal 1981, 3,152,936 fingerprint cards were received from criminal justice agencies. Included in these receipts were 172,529 submissions by federal criminal justice agencies. More than two-thirds of all criminal justice fingerprint card submissions were identified with arrest records already on file. For instance, one fingerprint card, submitted during the fall of 1980, resulted in the identification of an escaped Missouri murderer who was at that time in jail in Michigan charged under a different name with a second-degree murder.

The division gave significant assistance to other federal departments and agencies during fiscal 1981. There were 334,941 fingerprint card searches conducted for the Office of Personnel Management concerning persons seeking employment with the federal government. The military services and the Coast Guard submitted a total of 499,483 fingerprint cards for persons entering those services. The division processed 331,641 fingerprint card searches for the Department of Defense concerning persons required to have clearances for access to classified material relating to defense contracts. The Secret Service was afforded 8,313 expedite record checks in connection with the transition between administrations and the inauguration of President Reagan. During November 1980, the Internal Revenue Service requested and received identification records on approximately 500 individuals



Participating in the June 16, 1981, dedication ceremonies of the Forensic Science Research and Training Center are (left to right) U.S. Attorney General William French Smith and FBI Director William H. Webster.

Ninth Annual Symposium on Crime Laboratory Development at the FBI Academy in Quantico, Virginia. This week-long meeting brought together nearly 150 crime laboratory managers and directors from across the United States and Canada. For the first time,



whom the DEA had identified as alleged high-level drug traffickers.

The division made substantial contributions to state and local government agencies by processing 1,569,421 fingerprint cards of applicants for employment and licensing submitted under the authority of P.L. 92-544. This statute also authorizes record checks for federally chartered or insured banking institutions, and 343,737 cards were received for this purpose. Additionally, 129,523 cards were submitted by certain segments of the securities industry under the authority of P.L. 94-29.

Individuals desiring to determine what records the division maintained about them made 5,861 requests under the authority of Department of Justice Order 556-73. Subjects of FBI identification records submitted 321 challenges to the accuracy or completeness of their records which were forwarded to law enforcement agencies throughout the country for verification and/or correction.

The Identification Division continues to provide an important service to the criminal justice community by posting wanted notices against the fingerprint card records of persons being sought as fugitives. The division was able to provide information concerning the possible whereabouts of 27,052 fugitives when new fingerprint card submissions were matched with records containing wanted notices. For example, during August 1981, an FBI office received information that an extremely dangerous federal fugitive had been arrested under an assumed name in northern Mississippi for armed robbery. An inmate fitting the fugitive's description and awaiting release on bail for a local armed robbery was fingerprinted and his fingerprints were sent via facsimile to the division. Within hours, the inmate was identified as the federal fugitive and a detainer was placed preventing his release from custody.

As a result of court-ordered expungements and purge requests received from criminal justice agencies, 865,688 fingerprint cards were removed from files.

Latent fingerprint specialists examined evidence in 22,635 cases, including 453 cases for other federal agencies and 10,581 for state and local governmental agencies. These cases required 282,191 examinations and resulted in the identification of 4,082 suspects and 96 deceased persons. There were 250 court appearances by these specialists in cases which resulted in 2,930 years in prison terms, 18 life terms, and five death sentences. Fines of \$304,000 were also imposed.

The division continues to experience success in the use of laser equipment to detect latent fingerprints. Laser light is one of the latest weapons the FBI has introduced in its fight on violent crime. In some instances, where chemical powder will not detect fingerprints, laser light will. In the last year, the laser has been used to detect 284 latent fingerprints left behind at crime scenes that could not be found by the time-honored powder and chemical processes. For example, two men who robbed a bank not long ago wore ski masks to hide their faces and plastic gloves to leave

no fingerprints. One robber pulled off his plastic gloves and dropped them on the floor of the getaway car. To his surprise, he was identified when the laser detected his fingerprints on the inside fingers of the gloves. The success in using the laser to date has been so remarkable that a second laser unit was installed within the division during fiscal 1981.

The specially trained group of fingerprint experts who comprise the FBI Disaster Squad assisted in the identification of the victims of the explosion and crash of an Air Force aircraft near Walkersville, Maryland, on May 6, 1981. The remains of 21 bodies were recovered from the crash scene, and 14 individuals were identified by fingerprints or footprints.

During the fall of 1980, a program to hire and train hearing-impaired persons as fingerprint examiners was implemented. A total of 10 deaf employees are currently working in the division, and three of them have successfully completed the 12-week course for the position of fingerprint examiner. Since the feasibility of training hearing-impaired persons as fingerprint examiners has been demonstrated, a new field of employment for the handicapped has been established.

Significant progress continues toward the automation of work functions. Beginning in fiscal 1978, the division embarked on a three-year effort to use its five automatic fingerprint readers to convert the fingerprints appearing on 13½ million arrest fingerprint cards to computerized form for the ultimate purpose of instituting automated fingerprint searching. On September 30, 1980, this task was successfully completed on schedule. During fiscal 1981, another million arrest fingerprint cards were added to this automated file. On October 3, 1980, the division inaugurated automated fingerprint searching in one of the 23 units of its Criminal Fingerprint File. During fiscal 1981, three additional units commenced automated fingerprint searching, and fiscal 1982 plans call for the expansion of automated fingerprint searching into as many additional units of the Criminal Fingerprint File as possible under existing budgetary constraints.

During fiscal 1981, 828,000 first-time offender records were added to the division's automated arrest record file. That file now numbers over 5.7 million arrest records, and is growing at the rate of approximately 3,300 new records per workday.

## **Administrative and Support Services**

### **Administrative Services Division**

#### **Organization of the FBI**

Operations of the FBI's 59 field divisions and 12 foreign liaison posts are coordinated and supervised from FBI Headquarters in Washington, D.C.

The FBI field divisions and their 420 resident agencies (sub-offices) are located throughout the United States and in Puerto Rico and Guam.

The 12 foreign liaison posts make feasible the timely exchange

of information. They also provide assistance to foreign law enforcement agencies, particularly with regard to investigations that cross international boundaries. In addition, they serve as an effective adjunct to the FBI in carrying out its domestic investigative responsibilities, especially in the areas of terrorism, organized crime, and fugitive investigations.

### **Personnel**

At the close of fiscal 1981, there were 18,333 persons on the FBI payroll, including 7,751 special agents and 10,582 clerical, stenographic, and technical personnel.

### **Office of Equal Employment Opportunity**

The Office of Equal Employment Opportunity has an active recruitment program for minorities and women in an effort to make FBI ranks more representative of the American people.

Minority employment statistics in fiscal 1981 indicate the success of FBI efforts to recruit both minorities and women into its special agent ranks. At the close of the fiscal year, the FBI had on duty 351 women special agents and 566 special agents who are members of minority groups. Due to budget restraints, the FBI employed only 179 new special agents during fiscal 1981; however, of this number 27 percent were women and 14.5 percent were minorities.

### **Records Management Division**

The Records Management Division performs the recordkeeping functions of the FBI's central records system in support of the investigative and administrative responsibilities of the FBI. During fiscal 1981, over three million pieces of correspondence were routed and dispatched; 672,923 pieces of mail were processed for file; and 111,765 cases in the criminal, security and applicant categories were opened, bringing FBI records holdings to over six million files.

Other responsibilities of the division in fiscal 1981 included: administration of the UCR Program; processing requests under the Freedom of Information Act and Privacy Act; classification/declassification matters and ensuring the protection of national security information pursuant to Executive Order 12065; responding to requests for information and documents related to court orders and civil discovery; and handling requests for information from other federal agencies under the name check program as provided in Executive Order 10450, which in 1981 involved over two million requests for name checks.

In February 1981, the National Archives and Records Service began an extensive review of FBI Headquarters, field, and legal attache files in response to a U.S. district court order to devise an acceptable plan for the retention of FBI records holdings. A National Archives and Records Service appraisal team, accompanied by senior Records Management Division analysts, visited eight field offices and the FBI Academy and required the direct participation of 588 FBI employees. The court order calls for sub-

mission of the retention plan for judicial review in November 1981.

### **Freedom of Information Act and Privacy Act**

The Freedom of Information-Privacy Acts (FOI/PA) Section of the FBI's Records Management Division received 12,686 new FOI/PA requests and 1,465 reopened matters in fiscal 1981. Of the new requests, 12 percent originated with incarcerated persons. Scholars, news media representatives, historians and various organizations collectively accounted for another 7.7 percent of the new requests. Fiscal 1981 requests received were in addition to 4,209 requests already on file at the end of fiscal 1980. Estimated costs for fiscal 1981 for FOI/PA operations at FBI Headquarters were \$9,250,000. Currently, 703,173 pages of public interest material are available for review without charge in the FBI's public reading room.

An average of 315 people were assigned to FOI/PA matters at FBI Headquarters during fiscal 1981. Twelve hundred and eighty-seven administrative appeals were received during the fiscal year by the FOI/PA Section and there were 237 FOI/PA lawsuits pending at the close of fiscal 1981. Personnel from the Records Management Division participated in the work of a Department of Justice study group which submitted recommendations for modifications to the FOI/PA during fiscal 1981, and proposed amendments were forwarded by the Attorney General to the Office of Management and Budget on October 1, 1981.

### **Uniform Crime Reporting Program**

The Uniform Crime Reporting (UCR) Program provides periodic assessments of crime in the nation as measured by offenses coming to the attention of the law enforcement community. Through the combined efforts of over 15,000 state and local law enforcement agencies, data concerning crime, arrests, property stolen and recovered, law enforcement strength, and other information, are collected, processed and disseminated. Such data assist the law enforcement administrator in discharging his public responsibilities effectively. Statistical information on crime published under the program is widely used by public administrators, legislators, criminal justice researchers and planners, law enforcement officers, and the general public.

The national UCR Program receives guidance in policy matters from the International Association of Chiefs of Police and the National Sheriffs' Association. Training courses concerning UCR procedures are provided to program participants throughout the United States.

Ancillary programs include data presentations detailing information on law enforcement officers feloniously killed, bombing matters, and assaults on federal officers.

With the passage of the Parental Kidnaping Prevention Act of 1980, the UCR Program commenced an additional data collection. In accordance with this law, parental kidnaping statistics are being gathered and furnished to the Attorney General for periodic reports to Congress.

## Inspection Division

The Inspection Division is composed of three offices: the Office of Professional Responsibility, the Office of Inspections, and the Office of Program Evaluations.

The primary functions of the Office of Professional Responsibility are to supervise and/or investigate all allegations of criminality and serious misconduct on the part of FBI employees, and monitor disciplinary action taken concerning all FBI employees. In addition, the Office of Professional Responsibility maintains close liaison with the Office of Professional Responsibility in the Department of Justice, and coordinates FBI submissions to the Intelligence Oversight Board at the White House.

The Office of Inspections is responsible for conducting in-depth examinations of the FBI's investigative and administrative operations to determine whether: 1) there is compliance with applicable laws, regulations, and policies; 2) resources are managed and used in an effective, efficient, and economical manner; 3) desired results and objectives are being achieved; 4) financial operations are properly conducted; and 5) financial reports are presented accurately and fairly. These examinations are conducted for all FBI field offices, legal attaches, and Headquarters' divisions approximately once every two years. The work product of the Office of Inspections provides valuable input for management's short-range planning and decisionmaking, and serves as a viable administrative tool in the evaluation of FBI managers. During fiscal 1981, the Office of Inspections conducted a total of 37 inspections of FBI field offices and Headquarters' divisions. Financial audits were also conducted during each of these inspections. There were 13 additional financial audits conducted—four of FBI Headquarters' funds, five property, procurement, and inventory controls examinations, and four of selective operations in field divisions. Examinations were conducted by the Office of Inspections regarding eight Equal Employment Opportunity complaints and four administrative inquiries.

The Office of Program Evaluations conducts periodic evaluations of FBI investigative programs and administrative activities as well as studies and policy analysis. The purpose of these functions is to determine whether existing policies, procedures, and operations meet present and anticipated requirements. In addition, FBI operations are reviewed for economy, efficiency, and effectiveness. During fiscal 1981, seven evaluations of FBI programs were completed. All FBI major programs are evaluated on a five-year cycle.

## Technical Services Division

The Technical Services Division furnishes essential technical support and equipment to the FBI field offices and Headquarters divisions. This division is responsible for the management and operation of FBI Automatic Data Processing and Telecommunications services and the management of the field equipment pro-

grams which include the automotive fleet, the FM Radio Communications System, and the technical support equipment necessary to carry on the FBI's investigative mission.

During fiscal 1981, the FBI continued making significant progress in improving its efficiency and effectiveness in the collection, maintenance, and dissemination of investigative information.

Efforts continued in the development and implementation of "user"-oriented systems, with emphasis on supporting the investigations of organized crime, white-collar crime, and foreign intelligence activities.

On-line information processing support was provided to 16 field offices to assist the investigation of major cases including the President Reagan assassination attempt; the Atlanta murders; an investigation into the use of the Teamsters Central State Pension Fund; the murder of U.S. military personnel in San Juan, Puerto Rico, and the bombing of aircraft there; ABSCAM; the murder of Judge Wood in San Antonio; and the terrorist activities of the Cuban terrorist group OMEGA 7. At the end of fiscal 1981, on-line access was being provided to 16 field offices to support 27 major investigative matters.

The FBI Computer Center was again upgraded to support growing information processing requirements. Outdated host processors were replaced with two modern central processing units and the National Crime Information Center (NCIC) telecommunications control equipment was upgraded. The Computer Center's secondary storage capacity was doubled with no increase in cost or floor space requirements. These equipment upgrades have provided conservation of energy in that the new equipment requires 18 less KVA's per hour and outputs 51,000 less BTU's per hour.

In conjunction with the formulation of the fiscal 1983 Automatic Data Processing budget, the FBI developed a Long-Range Automatic Data Processing and Telecommunications Plan through fiscal 1991. The overall goal of this long-range plan is to integrate the many existing unfunctional systems at Headquarters while merging data processing, word processing, and telecommunications technologies into a total Field Office Information Management System. The priorities of this long-range plan were established by the Technical Resources Committee which includes the Assistant Directors of the major "user" divisions.

During fiscal 1981, the Technical Services Division provided all 59 field offices with sophisticated equipment, and 60 percent of the field offices were provided onsite technical expertise to support field investigative activities. The seven major cases which received on-line information processing support mentioned above also received onsite technical support. A total of 622 forensic examinations of electronic devices and magnetic tapes, including video tapes, were made for law enforcement agencies.

During fiscal 1981, a new survey methodology was implemented which allowed field office managers to set priorities for their vehicle acquisition requirements. This survey methodol-



ogy was required to cope with fiscal reductions to ensure that the highest priority requirements were satisfied. A total of 609 replacement passenger carrying vehicles were acquired. An approximate savings of \$500 per vehicle was realized by only including six of 11 police package options. A wider range of models and colors was selected to allow the use of all vehicles for surveillance operations. A total of 62 surveillance trucks and vans were also acquired.

A Contract Review Board was established to review all non-competitive contracting matters exceeding \$100,000. All contracts over \$250,000 are also reviewed by the board as well as all extraordinary contractual actions. The board assures itself of the need for such equipment or services and that the procurement process meticulously adheres to all federal procurement statutes and regulations.

Technical enhancements concluded in fiscal 1981 have enabled the NCIC to process average daily transactions of 327,822 in fiscal 1981, compared to daily transactions of 299,357 for fiscal 1980. Installation and testing of a new front-end processor begun in June 1981, will lead to more reliable telecommunications between NCIC and its users. NCIC also completed the first phase of the Interstate Identification Index. This is a pilot project to examine the technical, economic, and operational feasibility of decentralizing state criminal history records from the national Computerized Criminal History system. Initial results have determined a favorable response to this project from the state users. NCIC has broadened criteria for access to wanted and missing persons and stolen property files to allow inquiries from those agencies authorized by state statutes to conduct criminal justice functions, even though these agencies may not be governmental in nature.

### **Legal Counsel Division**

The Legal Counsel, along with his staff, furnishes legal advice to the Director and other FBI officials, rescarches legal questions concerning law enforcement matters, and supervises civil litigation and administrative claims involving the FBI, its personnel, and records. The Legal Counsel staff also represents the FBI at administrative proceedings before the Merit Systems Protection Board and the Equal Employment Opportunity Commission and

administers a legal training program for FBI personnel and other law enforcement officers.

To ensure constancy in legal training, legal advisors are appointed to assist all assigned investigative personnel in each of the 59 field offices. These legal advisors are experienced special agents who hold law degrees. Their role is to offer advice to fellow special agents regarding arrest problems, search and seizure, and the preparation of affidavits and other similar documents. Recognizing the need to keep these advisors current, in-service refresher courses are conducted by the FBI to ensure that investigations conform to the letter and spirit of the law.

### **Office of Congressional and Public Affairs**

The Office of Congressional and Public Affairs is an adjunct of the Director's office which handles news media requests and related matters of a public information nature, and provides the American people with a factual accounting of FBI programs, operations, and services on a continuing and timely basis.

This office cooperates with the electronic media, as well as authors and journalists, in furtherance of the Bureau's objective to inform the public of FBI goals, activities, and policies, and to enlist public support in the fight against crime. Noteworthy among the fiscal year achievements is FBI cooperation and assistance in the development of the "Today's FBI" television series.

This office also maintains liaison on Capitol Hill concerning legislative and oversight matters pertaining to the FBI and analyzes proposed or enacted legislation affecting FBI operations.

Notable among these matters are proposed amendments to the Federal Tort Claims Act, the pending FBI Charter, reform of the Federal Criminal Code, and proposals to amend the Freedom of Information Act.

### **Tours**

A visit to FBI Headquarters continued to rank high on Washington, D.C., visitors' priority lists. During fiscal 1981, more than 500,000 persons toured the J. Edgar Hoover FBI Building, viewing displays and learning about the Bureau's investigative jurisdiction, service function, and history. Tours are offered daily between 9:00 a.m. and 4:15 p.m., except weekends and holidays.



# Drug Enforcement Administration

**Francis M. Mullen, Jr.**  
**Acting Administrator**

The Drug Enforcement Administration (DEA) enforces the controlled substances laws and regulations of the United States.

DEA's primary responsibilities include:

- Investigation of major violators who operate at interstate and international levels;
- Regulation of laws governing the manufacture, distribution, and dispensing of licit controlled substances;
- Management of a national narcotics intelligence system;
- Coordination with federal, state, and local law enforcement authorities and cooperation with counterpart agencies abroad;
- Training, scientific research, and information exchange in support of drug traffic prevention and control.

Earlier, a provisional Headquarters structure was established with two Assistant Administrators currently reporting to the Acting Administrator. The Assistant Administrator for Operations has responsibility for the offices of Enforcement, Intelligence, Training, Compliance and Regulatory Affairs, and a newly established Office of Foreign Operations. The Assistant Administrator for Operational Support has responsibility for the offices of Administration and Management, Information Services, and Science and Technology.

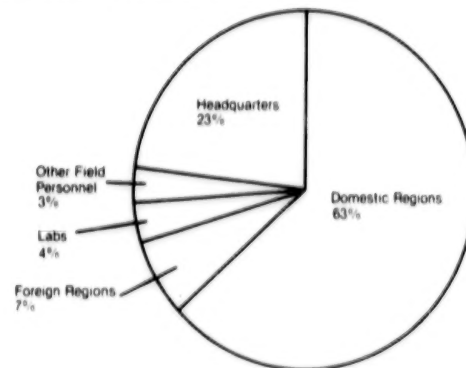
## Enforcement

The primary objectives of the Office of Enforcement for fiscal 1981 were as follows:

- Contain or reduce the introduction and distribution of Southwest Asian heroin into the United States.
- Achieve a significant increase in the seizure of drug-related financial assets.
- Improve the effectiveness of the Central Tactical Unit (CENTAC) program.
- Maintain a high level of enforcement pressure against clandestine laboratories manufacturing dangerous drugs.
- Improve enforcement programs directed at the flow of cocaine and marijuana entering the Southeastern United States through the Caribbean.

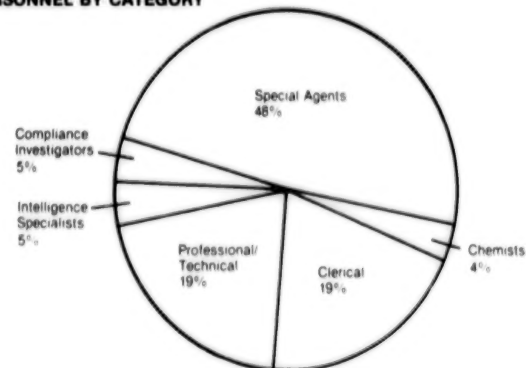
Significant gains in the accomplishment of these objectives were made through a high-impact enforcement strategy which included the enhancement of programs at or near the source of all major drugs; the long-term immobilization of major trafficking

**DEA PERSONNEL BY ORGANIZATION**



93% of the Special Agents and Compliance Investigators are assigned to field elements.

**DEA PERSONNEL BY CATEGORY**

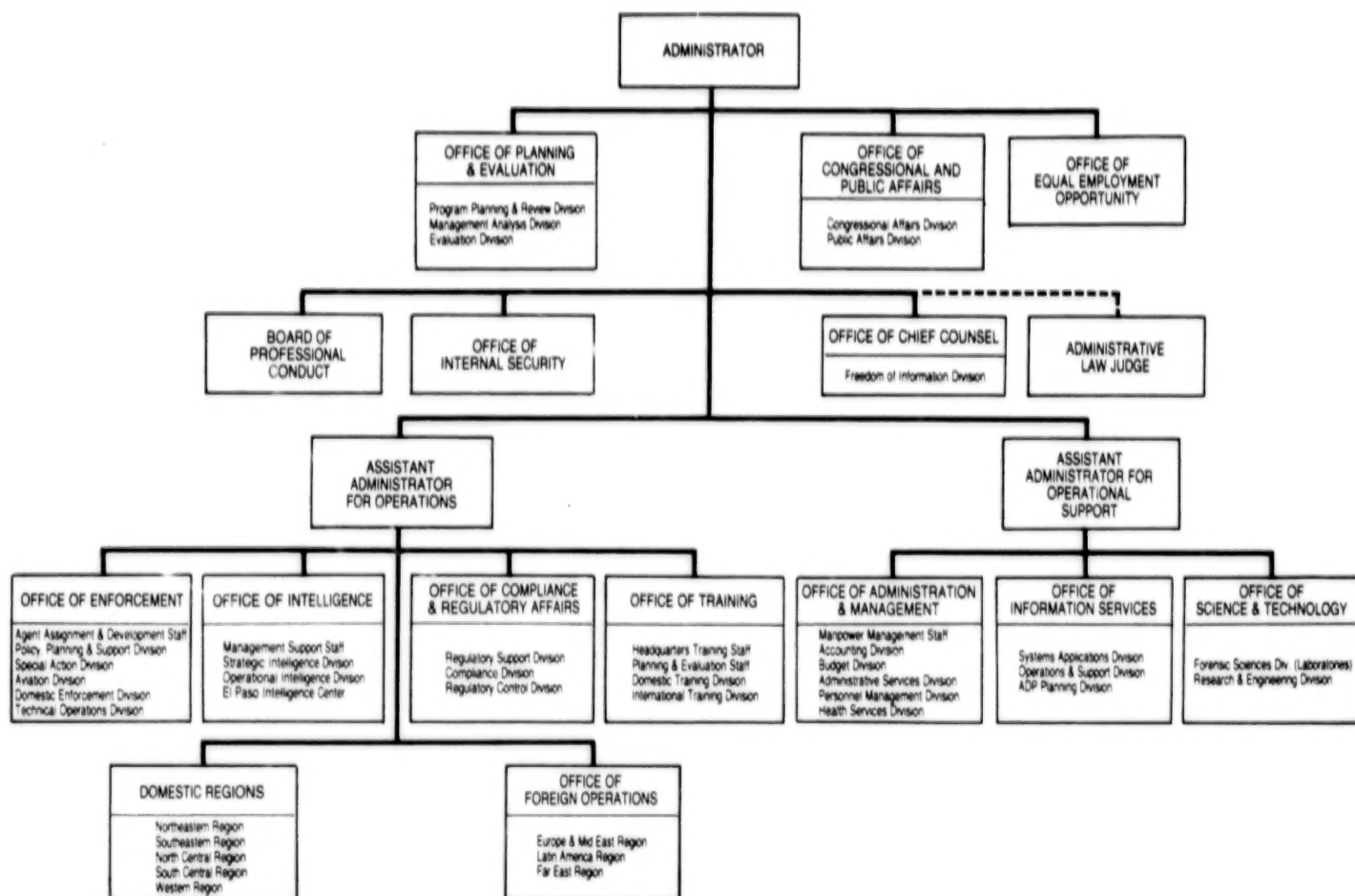


Category	Special Agents	Compliance Investigators	Chemists	Intelligence Specialists	Professional/Technical	Clerical	TOTAL
Authorized Positions	1894	207	143	195	739	764	3942
On-Board Strength	1946	202	143	189	839	684	4003

Sources: Summary of Ceilings and On-Board Report, 2/28/81  
Revised FY82 Budget Submission

organizations by removing the leaders and assets upon which these organizations depend; and an increase in the effectiveness of the total U.S. drug control effort by full and vigorous participation in cooperative drug enforcement operations at every level, particularly with the Federal Bureau of Investigation, U.S. Customs Service, U.S. Coast Guard, U.S. Army Criminal Investigation Division, Immigration and Naturalization Service, Internal Revenue Service, and Department of State, as well as with state, local, and foreign enforcement officials.

## Drug Enforcement Administration Headquarters Organizational Chart (Provisional)



An enhanced enforcement program in the United States, Europe, and Southwest Asia, supplemented by ongoing programs in Mexico and Southeast Asia, has continued to hold domestic heroin availability to a moderate increase despite the fact that Southwest Asian opiates continue to be abundantly available to the international illicit market. In 1981, the average retail purity of heroin available nationally was 3.9 percent at a price of \$2.30 per milligram, compared to 3.8 percent at \$2.23 in 1980. Increased heroin-related injuries and deaths have been largely confined to the Northeast Corridor and to established addict populations.

A heroin program management team at DEA Headquarters continues to direct domestic and foreign cooperative enforcement operations, including CFNTAC and Mobile Task Forces (MTFs), aimed at the highest levels of the heroin traffic. International programs for heroin suppression, which will result in long-term reductions in heroin availability in the United States, are gaining significant momentum. Through DEA initiatives and assistance, host government narcotics task forces have been established in Austria and Italy. With the encouragement and guidance

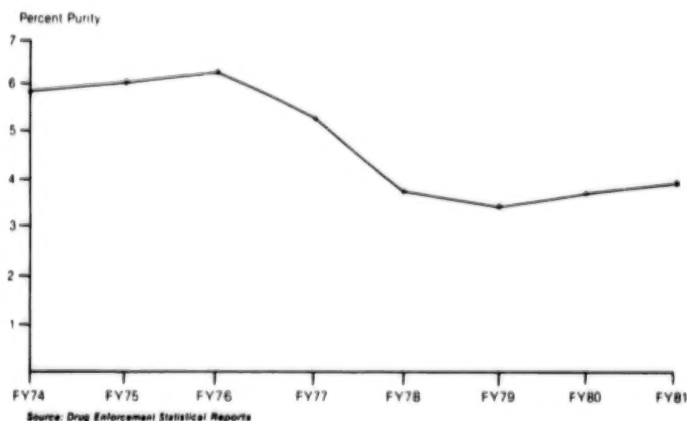
of DEA, the Pakistan Narcotics Control Board is establishing a criminal intelligence unit to assist in their drug enforcement operations, and DEA continues to assist the Government of Turkey with narcotics suppression efforts which are resulting in increased seizures of heroin. In July 1981, a joint DEA/French Central Narcotics Office investigation resulted in the seizure of a heroin conversion laboratory in a village north of Marseille and the arrest of a chemist who had been an active participant in the French Connection.

Continued success in containing the flow of Mexican heroin and two consecutive drought years in Southeast Asia in 1979 and 1980 have contributed significantly to limiting domestic heroin availability. The Government of Mexico has increased crop eradication resources in response to aerial reconnaissance and DEA intelligence reports of spreading poppy cultivation. After two years of planning and assistance, the Royal Malaysian Police have expanded their presence to Penang and north Malaysia, important transshipment areas. Since January 1, 1981, DEA/foreign cooperative efforts in Thailand have resulted in the arrest of a large number of traffickers, including 25 Class 1 violators, and

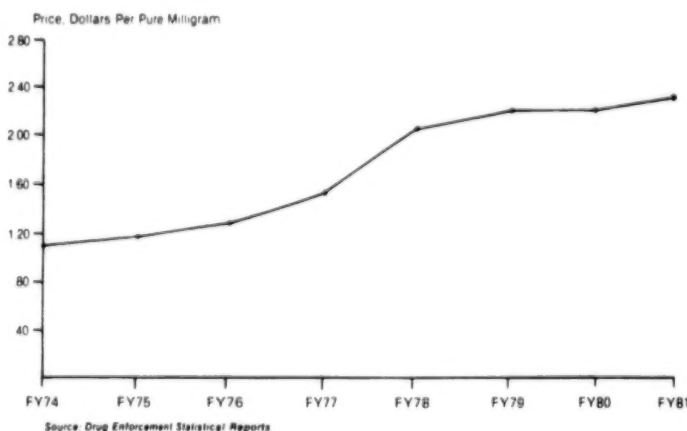
the seizure of over 750 pounds of heroin or opiate equivalent.

DEA continues its vigorous use of civil and criminal forfeiture laws against drug trafficker financial assets. Drug Asset Removal Coordination Units have been established in all domestic district offices to assist in the identification of assets which may be liable to forfeiture and to encourage joint prosecutions with the Internal Revenue Service, the Federal Bureau of Investigation, and the U.S. Customs Service. Special training in the financial aspects of drug investigations has been completed for 90 percent of DEA agents and analysts. *The Drug Agents Guide to Forfeiture of Assets*, a comprehensive 300-page review of U.S. forfeiture laws, has been prepared and disseminated by DEA. Enhanced expertise and coordination has resulted in the seizure of \$150 million in assets connected to the drug traffic during 1981, compared to \$94 million seized in 1980. Several important drug source and transshipment countries have proposed or passed forfeiture legislation modeled upon DEA's experience. Because of a high level of interest by many other countries, DEA has initiated a program, which will be sponsored by INTERPOL, to foster and encourage a coordinated international commitment to seize and forfeit assets derived from illicit drug trafficking.

#### HEROIN RETAIL PURITY



#### HEROIN RETAIL PRICE



CENTAC and MTF programs have continued to concentrate on conspiracy investigations at the highest level of national and international trafficking by the direction and support of 35 MTF operations and seven CENTAC investigations during 1981. MTF Operation Grouper, a landmark cooperative effort by DEA, U.S. Customs, U.S. Coast Guard, and Florida state and local officials, targeted 14 major maritime smuggling groups operating in south Florida. The results of Grouper, 127 total arrests including 45 Class I and 34 Class II violators, have had a significant impact on maritime trafficking in the area. DEA's high impact enforcement strategy, which focuses on multiregional and multinational trafficking organizations, has enhanced the ability of the CENTAC program to target the most important individuals in the operation of major international trafficking organizations. CENTAC 25, for example, has put into disarray a prominent organized crime group involved in the large-scale conversion of Southwest Asian heroin in Europe and the distribution of this heroin throughout the United States. To date, CENTAC 25 has resulted in the seizure of approximately \$3.5 million in drug assets and the conviction of 35 Class I and II Southwest Asian heroin violators.

The routine participation of Federal Bureau of Investigation, Internal Revenue Service, and U.S. Customs agents, as appropriate, in CENTAC and MTF operations will bring special expertise to these operational efforts concerning organized crime, drug-related assets, drug movement, and drug-related violence and corruption, as have ongoing cooperative investigations in the past. A DEA investigation during 1981 resulted in the arrest of the No. 1 money launderer in the Miami area, responsible for moving in excess of \$260 million in drug proceeds since 1968. CENTAC 26, initiated in mid-1981, will utilize the resources of DEA, other parts of the Department of Justice, the Metro-Dade Police Department, and other south Florida and federal law enforcement agencies, as well as the private sector, in a concerted effort to stem the alarming increase in narcotic-related homicides and drug trafficking in south Florida.

DEA continues to focus enforcement pressure on the organizations and operations responsible for illicit dangerous drugs. The Liaison Program, which involves voluntary cooperation between DEA and the producers and distributors of precursor chemicals, has proven to be an effective investigative aid in identifying clandestine laboratories and the organizations responsible for their operation. The decrease in Phencyclidine Hydrochloride (PCP) emergency room occurrences—from a quarterly average of 1,519 in 1979 to 749 in 1981—indicates that the nationwide abuse of PCP is on the decline since the enactment of the Psychotropic Substances Act of 1978 and subsequent intensified PCP enforcement effectiveness. In the last year, a cooperative effort by DEA and the Department of State has resulted in legislative action by the Federal Republic of Germany and Hungary which will virtually shut off the source for Latin American traffickers who supply approximately 85 percent of the methaqualone currently avail-



able on the U.S. illicit market. In parallel efforts, a DEA-funded operation set the framework for enforcement actions which resulted in seizures of 34,628 pounds of methaqualone since March 1981, and severe disruption of methaqualone trafficking in and through Colombia.

Disruption of the traffic of cocaine and marijuana continues to be a high priority of DEA cooperative enforcement efforts because of the widespread abuse of these drugs and the extremely high incidence of corruption and violence associated with their production and importation. In addition to major domestic investigations, a DEA-supported Essential Chemicals Tracking Program has been initiated by the Colombian Police to disrupt the manufacture of cocaine and lay the foundation for legislative initiatives to control essential chemicals. This program is based on the success of a similar program in Brazil. In the Caribbean, MTF Operation TIBERON I and II, conducted jointly by DEA, the U.S. Coast Guard, and the U.S. Customs Service, accounted for the seizure of 26 vessels and over 700,000 pounds of marijuana. The DEA and Customs Integrated Airport Program, which has resulted in a 128 percent increase in heroin and cocaine seizures

at program airports, will be expanded throughout the United States as the Integrated Border Enforcement Program. DEA domestic cocaine seizures have shown a dramatic increase, from 1,263 pounds in 1979 to 2,739 pounds in 1980—and 2,719 pounds in the first three quarters of 1981. Domestic marijuana seizures amounted to 282 tons during 1980 and 680 tons in the first three quarters of 1981.

Total DEA domestic enforcement activity, including state and local cooperative investigations, has resulted in 9,674 arrests during the first three quarters of 1981. Of these, DEA-initiated investigations have resulted in the arrest of 5,351 violators, 62 percent in Class I and II cases, and DEA and state and local task forces have produced 1,962 arrests—31 percent in Class I and II cases. The conviction rate for DEA-initiated cases during the first three quarters of 1981 was 96 percent in federal courts and 97 percent in state courts.

Programs to increase the cost-effectiveness of DEA enforcement operations by refining the planning and evaluation process were initiated in 1981 and are being developed and implemented. In 1981, DEA foreign regions (Southeast Asia, Latin America, Europe, and the Middle East) were realigned to implement direct reporting of all offices to DEA Headquarters.

## GEOGRAPHIC DRUG ENFORCEMENT PROGRAM (G-DEP)

G-DEP is a drug violator case classification system utilized to assure that enforcement efforts are directed toward the highest possible level of drug offenders. Utilizing G-DEP, violators are placed in one of four classes ranging from Class I for the most important offenders to Class IV for the lowest-level offenders. Action priority for a case is then based upon the level of violator involvement.

The factors considered in determining the G-DEP class for a violator are the geographical scope of criminal operation, type and amount of drug involved, and position held in the criminal organization. The gross amount of drug involved is adjusted to consider its purity or dosage unit strength. The violator level for foreign and domestic offenders is established by separate criteria.

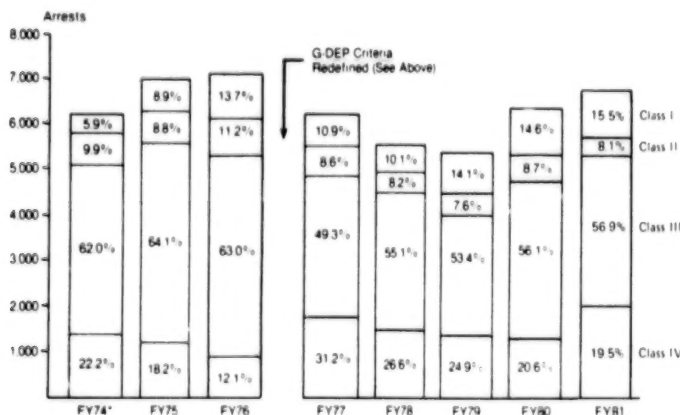
In January 1977, both the quantitative and qualitative criteria for classifying violators were made more stringent. As a result, classification of violators at the Class I through Class IV levels became substantially more difficult.

## Regulatory Affairs

DEA's Office of Compliance and Regulatory Affairs enforces provisions of the Controlled Substances Act (CSA) which pertain to the legitimate manufacture and distribution of controlled substances for medical and research purposes and the detection and prevention of diversion from these channels. The office conducts periodic investigations of drug manufacturers and wholesalers; identifies drug shipments in foreign countries which are potentially destined for illegal smuggling operations; conducts special investigations of targeted registrants who are potentially high level violators; monitors all imports and exports of controlled substances; establishes manufacturing quotas for all Schedule I and II substances; assigns drugs to controlled schedules; annually registers all handlers and prescribers of controlled substances; and conducts pre-registration investigations prior to approval of applications.

During fiscal 1981, DEA implemented the Targeted Registrant Investigation Program (TRIP). In the late 1970's, DEA noted significant drug diversion from health care professionals at the practitioner level—pharmacists and physicians—and responded through a new pilot project, named "Operation Script," initiated in 1980. "Operation Script" demonstrated that DEA criteria used to rate the highest level drug traffickers could be successfully applied to registrant violators. Targeting operations used in "Operation Script" were refined and procedures were established for a continuing program. TRIP is designed to direct federal resources at only the most egregious violators. Of the estimated 12,000 practitioners who are involved in diversion of one sort or another, only approximately 150 are annually identified

DEA DOMESTIC ARRESTS BY G-DEP CLASSIFICATION





for investigation through this program. These registrants represent the tip of a conceptual "violator pyramid." Because of resource constraints, the remainder are referred to state and local agencies for investigation.

TRIP uses information available in DEA computer systems in concert with field intelligence in order to identify violators appropriate for federal investigation. During the year, the number of arrests and seizures resulting from TRIP investigations increased substantially. Licensing revocations and suspensions also continued at a high rate.

Financial investigations were emphasized in tandem with the implementation of TRIP. Most supervisory investigators have received specialized training in this aspect of drug investigations, and managers have been instructed to explore asset removal options where there are good chances of success. Fines and civil penalties resulting from program activities totaled approximately \$4 million during the year.

DEA also made considerable progress in reducing the diversion of controlled substances from legitimate foreign commerce. During 1979 and 1980, DEA noted that bulk controlled substances were making their way from European manufacturers to illicit tablet manufacturing operations in South America. The tablets would then be smuggled into the United States by aircraft and vessel. Through the two compliance investigators assigned to foreign countries to maintain liaison with host country law enforcement officials and pharmaceutical industry representatives, DEA

has been highly effective in identifying diverted international drug shipments destined for illicit operations. Seizures resulting from intelligence developed through these efforts increased from 12.6 metric tons in fiscal 1980 to 37 metric tons in fiscal 1981.

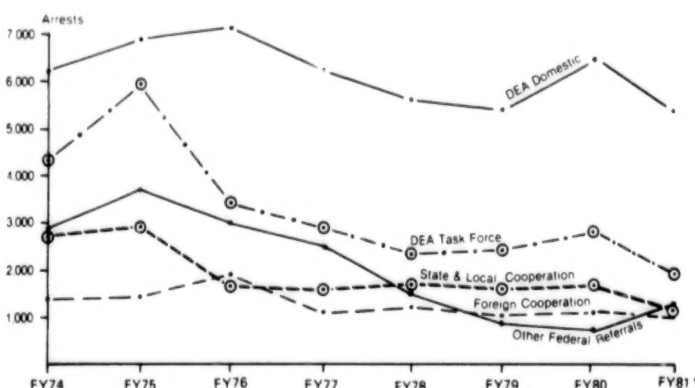
The Office of Compliance and Regulatory Affairs has initiated discussions and visits with producing nations to urge controls which would eliminate the supply available to drug smugglers—including the Federal Republic of Germany, Hungary, and Austria. In January 1981, the Hungarian government ceased methaqualone production altogether in response to these initiatives. The Federal Republic of Germany administratively restricted methaqualone exports in July 1981. Austria has also been responsive to these overtures and has discussed the possibility of placing methaqualone in Schedule II.

The DEA's cyclic investigation program has greatly reduced diversion from nonpractitioner registrants. Current opinion places the amount of diversion from these registrants in the area of 10 percent of the total lost from the legitimate pipeline. During the year, DEA implemented a revised cyclic investigation program to provide for more efficient management of available resources. Under the new procedures, DEA concentrates investigative efforts on "high-risk" registrants. Firms that have historically been in compliance or that are not vulnerable to diversion are not investigated extensively. Resource savings have been used in support of TRIP.

DEA's Drug Oriented Investigations, which began in 1980, continued into 1981. They focus on specific drugs of abuse. The thrust is to track distribution of a targeted drug from the bulk manufacturer through the legitimate chain to the practitioner level with coordinated nationwide action at all distribution levels. This program seeks to reduce the abuse of these selected drugs, and thereby reduce deaths and injuries by developing cases throughout the manufacture and distribution chain.

In late 1979, DEA received intelligence information regarding a substance marketed illicitly as "China White" for approximately \$1,000 per ounce. The drug was identified as alpha-methylfentanyl, a structural analog of fentanyl, which is a Schedule II controlled substance. Alpha-methylfentanyl produces pharmacological effects similar to those produced by morphine. At least 12 overdose deaths have been caused by abuse of "China White." On September 22, 1981, this substance was placed in Schedule I of the CSA. Six other drugs of abuse were placed under control in the CSA during the year.

#### DRUG ARRESTS



Source: DEA Drug Enforcement Statistical Reports

Major violators in the Class I and II category are interstate or international traffickers, heads of criminal organizations, laboratory operators or financiers. Enforcement efforts continue to be directed primarily toward these two categories to achieve the greatest impact.

Most categories of drug arrests increased during FY 1980. Major violator arrests show the results of increased enforcement efforts as DEA domestic arrests reached the highest point since 1976. A total of 6,423 arrests were made, of which 23.3 percent were Class I and II violators, up from 21.7 percent in FY 1979. DEA task force arrests rose slightly, continuing a gradual increase which began in FY 1978. The continuing decline in other federal referral arrests, made primarily by U.S. Customs Service and Border Patrol, due to their low level, are handled administratively or processed by state and local courts. Other categories remained essentially the same.

\*Statistics based on 9 months

## Intelligence

The intelligence program collects, analyzes and exchanges drug-related intelligence for both strategic and operational purposes. As part of DEA's lead agency role, this program provides intelligence to other federal agencies, state and local law enforcement organizations, and foreign governments.

During fiscal 1981, the demand for operational and financial intelligence grew—primarily as a result of increasingly sophisticated drug trafficking networks and larger, more complex investigations. To enhance tactical intelligence, Headquarters functions were realigned. Sections were assigned direct enforcement support responsibilities for specific field offices. A Financial Unit was established in January 1981, to collect, analyze, and disseminate information on the money and other assets associated with illicit drug trafficking. Some intelligence analysts were transferred to key field offices experiencing significant increases in enforcement activity.

The Southeastern United States, particularly the south Florida area, was the site of the most dramatic increase in activity as a result of growing cocaine availability and associated violence. In response to concern about increases in violent crime, a Headquarters intelligence analyst was assigned temporarily to the Metro-Dade County Police Department. The purpose was to determine the extent of narcotics trafficking in the rising level of violence. Initial research disclosed that about one in three homicides appeared to be drug related. The need for closer coordination and cooperation between DEA and the Homicide Unit resulted in formation of a special investigative unit to work on a regular basis with local authorities.

The end of the fiscal year showed a significant increase in operational intelligence support to the field although this type of support had gradually increased throughout the year. The extensive support to Southwest Asian heroin investigations begun last fiscal year continued. Numerous other investigations received support.

The intelligence program also provides support to enforcement operations through the intelligence units assigned to major field offices. The largest operational field intelligence unit is the Unified Intelligence Division (UID) in New York City. UID is a cooperative effort by New York State Police, New York City Police, and DEA personnel. It is responsible for collection and analysis of intelligence relating to New York's drug trafficking situation and for dissemination of information to appropriate agencies. During the past year, the UID played a significant role in gathering intelligence concerning organized crime involvement in trafficking of Southwest Asian heroin.

The El Paso Intelligence Center (EPIC) is another source of continuous intelligence support to federal enforcement and to state and local governments. EPIC's primary responsibilities are the exchange of sensitive information dealing with drug movement and intelligence support to the programs of participating agencies. EPIC is a cooperative effort staffed by personnel from DEA and eight other federal agencies—Immigration and Naturalization Service, Coast Guard, Customs Service, Bureau of Alcohol, Tobacco and Firearms, Federal Aviation Administration, Federal Bureau of Investigation, U.S. Marshals Service, and the Internal Revenue Service. In November 1980, the Internal Revenue Service temporarily assigned an agent to EPIC. Four

states became EPIC participants during the year, bringing the total to 45. Total EPIC transactions for the year were 196,206—an increase of 16 percent from fiscal 1980. EPIC was able to provide actionable intelligence in response to 36 percent of the queries received. One of EPIC's primary activities during the year was coordination of several multiagency intelligence and enforcement operations aimed at interdicting drug shipments destined for the United States. EPIC provided assistance in seizures totaling over two million pounds of marijuana, 427 pounds of cocaine, 6,790 grams of heroin, 6,249 pounds of hashish, 16.5 million dosage units of quaaludes, 94 aircraft, 106 vessels, and \$2.1 million in cash.

The strategic program continued to provide predictive intelligence and to forecast trends through its periodicals, the *Monthly Digest of Drug Intelligence* and *Quarterly Intelligence Trends*, in addition to numerous other geographic and drug-specific strategic assessments that were published.

The Special Field Intelligence Program (SFIP) continued to support priority drug areas, both foreign and domestic, with predictive intelligence as well as intelligence which later formed the basis for enforcement operations. During the year, 41 specific programs were funded. Among the most notable was a South American SFIP which provided an improved basis for the estimates of cocaine and marijuana production.

The Domestic Monitor Program has provided increasingly accurate indicators of domestic heroin availability as a result of the influx of Southwest Asian heroin into Northeastern and North-Central States. The program indicated a stabilizing of heroin availability during fiscal 1981. The intelligence derived from this program has been particularly valuable to state and local law enforcement officials.

The National Narcotics Intelligence Consumers Committee (NNICC) published its third annual Narcotics Intelligence Estimate in December 1980. The NNICC is made up of representatives of DEA, Coast Guard, Customs Service, Federal Bureau of Investigation, Immigration and Naturalization Service, Internal Revenue Service, National Institute on Drug Abuse, Department of State, Department of the Treasury, and the White House, and is chaired by the Director of the Office of Intelligence. Committee members share intelligence and arrive at the most comprehensive estimate available on the supply of drugs to the illicit U.S. market as well as the money flows associated with this traffic. The committee also coordinates and publishes intelligence collection requirements, which form the basis for collection efforts.

In coordination with the Office of Enforcement, an in-depth survey of marijuana production and distribution in the United States was conducted. It was determined that the quantities produced and the number of acres under cultivation were far higher than previously estimated. Cultivation of sensemilla, a more potent and expensive variety of marijuana, was confirmed in nine states and is believed to exist in nine additional states.

## Training

DEA provides entry-level and advanced training for DEA employees and multi-level training in drug law enforcement skills to other federal, state, local, and foreign officials.

Internal training is designed to develop and maintain a sophisticated and professional work force possessing the necessary skills and knowledge to effectively carry out DEA's mission. In addition to entry-level training, DEA in fiscal 1981 provided employees with such training as Intelligence Collection, Intelligence Analysis, Conspiracy, Financial Investigations, Reverse Undercover, Clandestine Laboratories, Individualized In-Service Training and Testing, Emergency Medical Care, and Regional In-Service Training. There were 3,930 instances of training of core discipline employees in fiscal 1981.

Training programs for state, local, and other federal employees are designed to expand significantly and economically the quantity of qualified personnel available nationwide, at all levels of government, to engage in the national effort against drug trafficking. DEA in fiscal 1981 provided training in advanced and specialized drug law enforcement investigative techniques and methodologies in Washington, D.C., and other locations in such programs as the Drug Enforcement Officer Schools, Forensic Chemist Seminars, and many specialized seminars designed to meet the needs of a specific area—such as anti-smuggling seminars in the Southeast and clandestine laboratory seminars in the West Coast and Mid-Atlantic States. Funding constraints during the second half of fiscal 1981 resulted in a quantitative reduction in state and local training. In fiscal 1981, a total of 5,202 state, local, and other federal employees received DEA training.

DEA's training for foreign officials is funded by the Department of State as a component of the international narcotics control effort. It is designed to increase the effectiveness of foreign drug enforcement personnel, open channels of communication, and enhance cooperation among foreign countries. In fiscal 1981, international training programs included basic drug enforcement and drug intelligence training development. International training was conducted in Washington, D.C., and through the use of Mobile Training Teams at many locations throughout the world. A total of 1,266 foreign officials were trained by DEA.

In fiscal 1981, DEA relocated its Office of Training to the Federal Law Enforcement Training Center (FLETC) at Glynnco, Georgia. The sharing of instructional expertise with FLETC has enabled DEA to reduce the number of positions within the Office of Training. The lower cost for quarters and subsistence at FLETC is expected to result in substantial cost savings.

DEA placed additional emphasis on officer survival training because of the increase in violence in the operational environment. New programs were developed in Clandestine Laboratory Investigations and Reverse Undercover Techniques. DEA completed its first phase of Financial Investigations Training and is

currently working with the Federal Bureau of Investigation in the development of a joint Advanced Financial Investigations/Reverse Undercover training program. DEA's Office of Training is also cooperating with the Federal Bureau of Investigation in a joint project to assess state and local enforcement training needs nationwide. In fiscal 1981, DEA placed greater emphasis on the training of military personnel. For example, all entry-level U.S. Army Criminal Investigation Division special agents received specialized drug enforcement training from DEA.

## Legal Functions

The Office of the Chief Counsel provides legal assistance to the Administrator in carrying out DEA's regulatory responsibilities under the CSA. Attorneys of the Office of Chief Counsel prepared 57 orders to show cause why action should not be taken by DEA to revoke, deny, or suspend a registration to engage in controlled substance activities. Thirty-two of these matters were docketed with the DEA Administrative Law Judge for hearings. Twenty-six were disposed of without full evidentiary hearings. Six hearings were held, occupying nine hearing days. Final decisions are reserved for the Administrator.

Approximately 400 hours of instruction were provided by attorneys at DEA training schools for basic special agents, in-service trainees, and state and local officials. In addition, the office produced four legal comments and a 380-page comprehensive review of the law of forfeiture entitled *Drug Agents' Guide to Forfeiture of Assets*.

Attorneys from the office represented the agency at 17 personnel-related proceedings, occupying 37 hearing days.

Attorneys reviewed 2,009 matters concerning seized vehicles, vessels, aircraft, and other assets for the legal sufficiency of their seizure. Over \$11 million in cash and other valuables, exclusive of vehicles and aircraft, were ultimately forfeited to the United States. Six hundred and sixty-four rulings on petitions for remission or mitigation of forfeiture were made.

Attorneys in the office are assigned regional responsibilities for the five DEA Regions and are in frequent contact with management in the field to render assistance on enforcement matters, and with Assistant U.S. Attorneys to assist in civil litigation in which DEA is involved. They also advise Headquarters officials on procurement and personnel as well as enforcement matters.

The Model Drug Paraphernalia Act, drafted by the office in 1980, has been adopted in at least 21 states and upheld virtually everywhere it has been tested. In 1981, the office drafted a Model Forfeiture of Drug Profits Act which has been adopted by three states and is under consideration in several others.

## Planning and Evaluation

This office serves as the principal adviser to the Administrator for planning and policy analysis, management systems analysis, organizational control, and Headquarters and field operations evaluation.



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The key area of progress in the planning and evaluation program has been the institutionalization of the function as a routine and systematic part of DEA's management scheme. Program plans keying on priorities for the fiscal year are prepared for each Headquarters and field program. Each Headquarters and field unit is subjected to a detailed analysis of the past year's activities with a subsequent management accountability conference conducted by the Administrator on a regularly scheduled basis. These provide the basis for manpower distribution decisions, correction of deviations from predetermined program emphasis, and the resolution of problem situations. Special analyses of problem areas are conducted at the direction of the Administrator to correct specific and critical program deficiencies. Cyclic onsite evaluations serve to correct program deficiencies before major problems develop. Long-range strategy development is a regular ongoing activity providing a basis for policy guidance. All of these processes are an integral part of the internal policy, resource, and other management decisionmaking.

As an example, to improve the cost-effectiveness of the agency, this office completed an analysis of high-cost areas in DEA operations and required operational entities to better justify expenditures. This encouraged further analysis by field organizations and resulted in overall cost-cutting efforts.

## **Science and Technology**

The Office of Science and Technology assures that DEA has

and utilizes the scientific and technical resources and capabilities needed to achieve its objectives, plans, and programs.

The office provides operational and scientific support and conducts research directly related to the DEA law enforcement, intelligence, and regulatory functions.

Forensic laboratory support has continued at a high level by providing drug analysis for prosecution of drug law violators. The laboratories continue to provide assistance to special agents in seizures of clandestine laboratories and other field activities. Through the use of chemical signatures, seizures of heroin are being monitored for determination of purity and distribution patterns. Two dangerous new substances, which were sold on the illegal market as "Chine White," were identified as alpha-methylfentanyl and para-fluro fentanyl. These substances are reported to be approximately 200 times as potent as morphine as a narcotic analgesic.

Research and engineering efforts in the past year have been mainly devoted to the development of a voice privacy system for radio communications. Interagency coordination on voice privacy is being carried out with other federal law enforcement agencies.

The office continues to maintain liaison with laboratories and engineering staffs of federal, state, local, and foreign law enforcement agencies.



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## Criminal Division

**D. Lowell Jensen**  
**Assistant Attorney General**

The Criminal Division serves the public's interest for justice through fair and effective development and enforcement of federal criminal statutes.

All federal criminal laws are under the Criminal Division's general supervision except for those assigned to the Antitrust, Civil Rights, Land and Natural Resources, or Tax Divisions. The Division also supervises certain civil litigation arising under the federal liquor, narcotics, counterfeiting, gambling, firearms, customs, agriculture, and immigration laws.

In addition, the Division is responsible for civil litigation arising from petitions for writs of habeas corpus by members of the Armed Forces, actions brought by or on behalf of federal prisoners, alleged investigative misconduct, and legal actions related to national security issues.

An Assistant Attorney General, assisted by four Deputies, directs the Division's activities through seven line sections and seven staff offices. The Assistant Attorney General also provides representation to the Congress on criminal matters and to the Office of Management and Budget and the White House; maintains liaison with the 94 U.S. Attorneys and the federal investigative agencies; and establishes federal criminal law enforcement policies and facilitates their implementation.

The Assistant Attorney General also provides Department leadership to the Executive Working Group for Federal-State-Local Prosecutorial Relations. The group was established in 1980 to provide the first formal liaison among the Department, the National District Attorneys Association, and the National Association of Attorneys General for improving relations among federal, state, and local prosecutors.

The following descriptions outline the functions of each section and office of the Division:

### **Organized Crime and Racketeering Section**

This section develops and coordinates nationwide enforcement programs to suppress the illicit activities of organized criminal groups. Historically, these activities have included narcotics dealing, loansharking, and the illegal infiltration of legitimate business, labor unions, law enforcement groups, and government.

Functions of the section include: coordinating the efforts of federal investigative agencies and U.S. Attorneys against organized crime; selection of cases developed in all sections of the Criminal Division which are appropriate for prosecution under Title IX of the Organized Crime Control Act of 1970 and main-

taining civil responsibility over penalties, forfeitures, and civil injunction actions arising out of that Act; working in conjunction with the National Organized Crime Planning Council to concentrate enforcement efforts; and overseeing the enforcement of federal criminal statutes in the area of labor-management relations, internal labor union operations—including the operations and investments of employee benefit plans—and various vice-related crimes.

Resources have been concentrated against leaders of criminal organizations, labor-management racketeering, infiltration of legitimate business, corruption of public officials, and major narcotics trafficking. Section personnel have developed increasingly sophisticated cases involving intricate financial arrangements and documentation.

As an illustration of the strong emphasis in prosecuting leaders of crime organizations during fiscal 1981, nine bosses of organized crime syndicates and one formerly powerful boss were indicted or convicted. Three were sentenced, one remanded after forfeiting an appeal bond, one is awaiting sentencing, and the others are under indictment. Their organizations were based in New York, Los Angeles, New England, Florida, Philadelphia, Chicago, New Orleans, Detroit, and Kansas City. In one of the cases, the boss and the entire hierarchy of the Los Angeles syndicate were sentenced to terms ranging from two to five years. Significantly, trials ending in November 1980 in Manhattan and in Los Angeles established that organizations in both cities comprised a criminal enterprise.

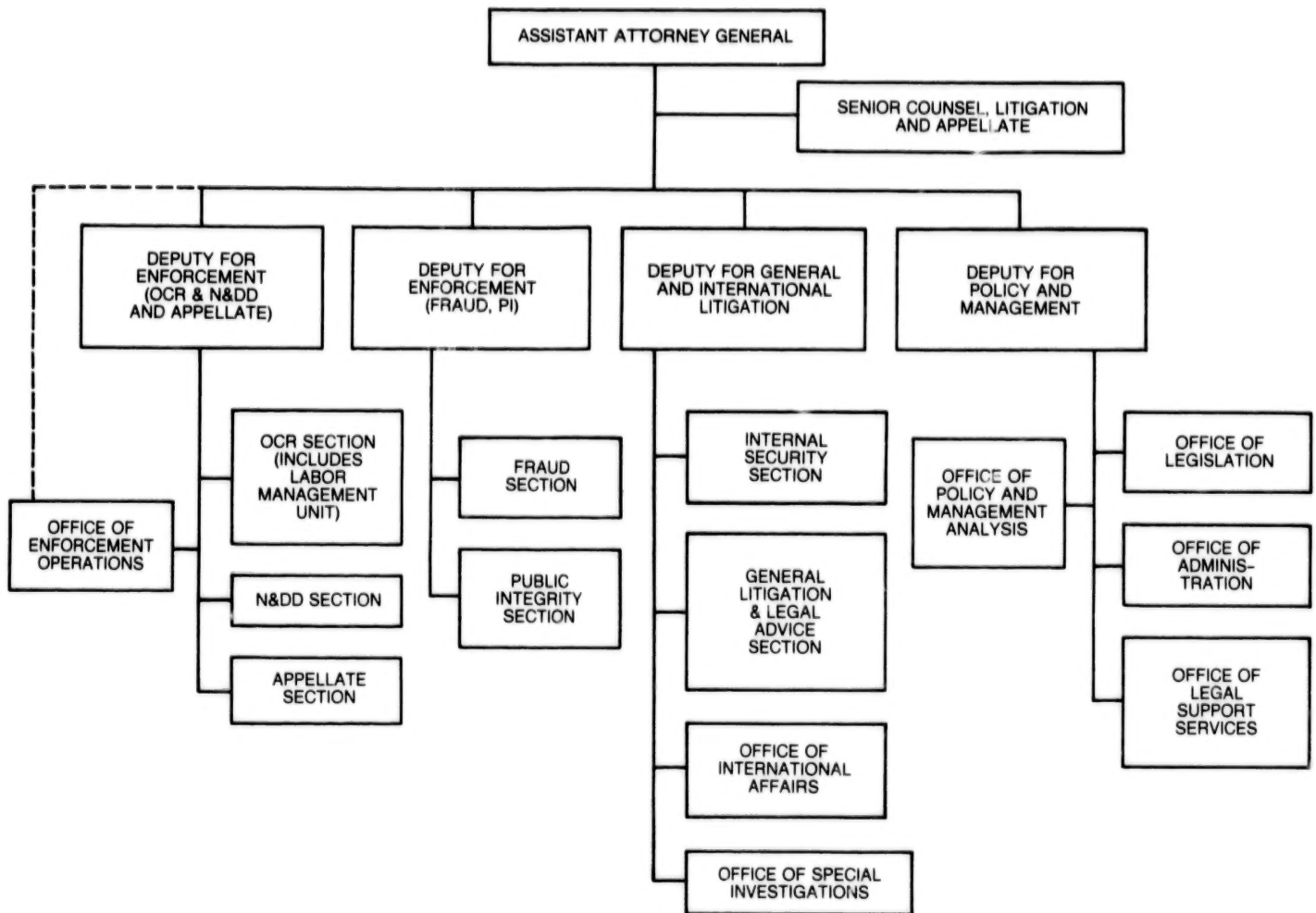
In addition to these organized crime cases, the undercover ABSCAM investigation in which two Congressmen were convicted last year was concluded—ending in the conviction of four more former Congressmen, Richard Kelly, Raymond Lederer, John M. Murphy, and Frank Thompson, and of U.S. Senator Harrison A. Williams.

### **Syndicate Cases**

On November 14, 1980, the entire ruling hierarchy of the Los Angeles syndicate was convicted on racketeering and extortion charges. Dominick Brooklier, boss, was sentenced to four years' imprisonment; Samuel Sciortino, underboss, four years, \$25,000 fine; Louis Tom Dragna, former boss, two years, \$50,000 fine; Jack LoCicero, counselor, two years; and Michael Rizzitello, street boss, five years.

On January 24, 1981, New York mob boss Frank Tieri, convicted on November 21, 1980, was sentenced to 10 years and fined \$60,000. Tieri died before execution of the sentence.

## Criminal Division



Significant in the convictions of Brooklier in Los Angeles and Tieri in Manhattan is that both juries, concluding their cases within a week of each other, reached the unprecedented decisions that "La Cosa Nostra" organizations in both cities comprised a criminal enterprise. Typically, in cases brought under the Racketeer Influenced and Corrupt Organizations (RICO) Act, defendants are simply charged with participating in criminal enterprises. In these two cases, the indictments specifically required a finding that the "La Cosa Nostra" organizations mentioned were themselves criminal enterprises. The jury so found.

The other crime leaders are former New York syndicate boss Joseph Bonanno, Sr., who claimed to have retired years ago, sentenced to five years and fined \$10,000 pending a health study following his conviction for obstruction of justice during an investigation of his business holdings; Carlos Marcello, New Orleans boss, convicted with others in the BRILAB investigation involving political payoffs; Nicholas Civella, Kansas City boss, remanded to a four-year term for attempting bribery of a warden; Philip Testa, Philadelphia boss, indicted on racketeering charges

with others (Testa was killed in gangland style a month later); Raymond L.S. Patriarca, New England boss, indicted with others on racketeering charges involving the Laborers International Union; Santo Trafficante, southern Florida boss, and Anthony Accardo, Chicago boss, indicted on similar charges involving the Laborers International Union; and Anthony J. Zerilli, Detroit boss, indicted with others on charges of extortion.

On December 2, 1980, in Miami, William Obront, a leader in Canadian organized crime, was convicted of immigration violations. Deportation is pending.

On January 30, 1981, John Stanfa, chauffeur for Philadelphia mob boss Angelo Bruno on the night of his murder, was convicted of perjury. He later was sentenced to eight years in jail. Stanfa had denied meeting with four of Bruno's secondary leaders who also were later slain.

On February 17, 1981, Michael Paradiso was convicted in Brooklyn of smuggling untaxed cigarettes into the state. Paradiso headed up his own "crew" of racketeers and thieves preying on residents of the Brooklyn area. He was sentenced to eight years.

On March 30, 1981, Sam Cagnina III was convicted of racketeering charges involving murder, fencing, arson, prostitution and drug dealing. He was sentenced to 45 years.

On June 11, 1981, Bridgeport, Connecticut, mob boss Frank Piccolo was indicted for shaking down entertainers Wayne Newton and Lola Falana. He was murdered before he could be brought to trial.

On June 12, 1981, Robert DiBernardo was convicted of pornography in Miami, Florida, following his involvement in the Federal Bureau of Investigation's (FBI) MIPORN undercover operation.

On July 7, 1981, Nicodemo Scarfo, the last remaining leader from the Bruno family in New Jersey, was convicted of firearms violations. Other mob bosses and leaders are reported on in other sections of this report.

### **Public Official Corruption**

In addition to the completion of the series of prosecutions based upon the FBI's ABSCAM undercover investigation, other significant cases are:

On December 16, 1980, Philip Bertman was convicted of attempted bribery of the head of the Honolulu, Hawaii, Liquor Authority to obtain approval of a beer franchise. Bertman was quite free in describing his association with several "name" racketeers, including Meyer Lansky, and claimed to have paid off two organized crime factions in Hawaii to get the right to the franchise in the first place. He was sentenced to serve five years after completing a drug sentence imposed in Los Angeles.

On January 21, 1981, Augustine Mazzio, the largest numbers "book" in Philadelphia, was convicted of attempted police bribery following a 2½-year FBI and Philadelphia police undercover investigation. Also netted in the same investigation was the highest ranking Bruno syndicate official left alive, Frank Narducci, convicted on April 30, 1981, on similar charges.

On August 21, 1981, Francis E. O'Connor, Commissioner of General Services of Nassau County, New York, was convicted of perjury and obstruction of justice in a probe of kickbacks paid relative to a waste disposal facility in Hempstead, New York.

### **Labor Racketeering**

On October 10, 1980, Daniel J. Pacheco, Business Manager of Honolulu Glaziers Local 1889, was convicted of extortion for shaking down the contractor on a federal courthouse. Pacheco ultimately was sentenced to jail.

On April 1, 1981, Neil J. Dalton, President of Teamsters Local 486, was convicted of embezzlement. Audio tapes obtained during the investigation revealed that Dalton and other Teamsters officials in Michigan got kickbacks from all items purchased from LaSalle Distributing Co. in a deal set up originally by the late James R. Hoffa. According to Dalton, LaSalle was owned by "the Mafia." Dalton is to serve three years, pay a \$10,000 fine, make restitution of \$19,000 and forfeit his union office.

On June 8, 1981, Eugene and Robert Boffa were convicted by the Philadelphia Strike Force of running a labor-leasing scheme whereby they provided drivers to Fortune 500 companies while paying off Teamsters officials to stay non-union. Expensive provisions of the Teamster national contract were thus avoided.

On May 1, 1981, Nunzio Provenzano, an official of Teamsters Local 560, was convicted in Newark of accepting \$187,000 in payoffs from major truckers (such as Pacific Intermountain Express, Mason Dixon Lines, T.I.M.E. DC and Helms Express, a division of Ryder Truck Lines) to allow them to pay their drivers less than the Teamster national contract while operating in New Jersey. Provenzano is to serve 10 years and pay a \$50,000 fine.

On June 23, 1981, Louis Sanzo, President of Local 29 of the Blasters, Drillrunners and Miners Union, was convicted in Brooklyn of evading tax on almost \$100,000 in payoffs from employers. Convicted of contempt of court during investigation of the matter were organized crime members Thomas Mancuso and Samuel Cavalieri. Sanzo is to serve three years.

On July 17, 1981, Ronald P. Scaccia was convicted of racketeering, embezzlement and labor bribery charges. Scaccia had been business manager of Laborers Local 214 in Oswego, New York, until he was convicted of embezzlement and sentenced to three years in jail in 1975. While deprived of union office by that conviction, he continued to exercise considerable influence in the union until this latest conviction, for which he was sentenced to an additional five years. The evidence disclosed that Scaccia and his codefendants had even stolen the money intended to buy toys for children at the union Christmas party.

On September 18, 1981, Timothy P. Smith, President of TPS Enterprises, Inc., which had administered several union pension and benefit plans in the Philadelphia area in the 1970's, was convicted of diverting over \$100,000 of that money and of tax evasion on those proceeds.

### **Infiltration of Business**

On October 17, 1980, Detroit mob leaders Raffael Quasarano and Peter Vitale were convicted of extortion and racketeering for "muscling in" on a half ownership of the Rogersville Cheese Co. in Wisconsin. Each was sentenced to serve four years and fined \$10,000. In later proceedings, the half interest, valued at a minimum of \$1,200,000, was forfeited to the United States.

On October 21, 1980, Detroit syndicate members Paul Vitale and Joseph Barbara, Jr., the latter a son of the host of the infamous Appalachian conference, pleaded guilty to tax evasion charges growing out of their obtaining shares of the \$5 million purchase price of Tri-County Sanitation Services, Inc., of which they were hidden owners. Tri-County had been sold to SCA Services, Inc., a public company listed on the New York Stock Exchange. Vitale received a four-year sentence; Barbara one year.

On December 13, 1980, in Miami, mob leader Albert Joseph Facchiano and mob member Francis C. "Jigger" Santo were convicted of making extortionate loans to south Florida garment manufacturers. Both received 20-year sentences.



On May 1, 1981, Charles Tashjian, assigned by mob leader Gennaro Anguilo to oversee a bankruptcy scam in Boston, was convicted of extortion and sentenced to a six-year term. Businesses involved in the fraud had ordered and received appliances from legitimate sources, then failed to pay for them. Tashjian bought them up at 50 percent of invoice price, then sold them to Boston discount stores. Tashjian was sentenced to serve six years.

On June 5, 1981, partners in the Detroit accounting firm of Gullett, Fox and Boyer were found guilty of tax and currency violations arising out of a scheme whereby individuals and business executives drew checks to pay false invoices, then cashed the checks at a Canadian bank with the aid of the accounting firm and reimported the resulting cash. The money-washing scheme was used to cover up tax evasion, embezzlement and business bribes paid to employees of Ford Motor Co. and Chrysler Corp. The firm members, who also acted as accountants to many of Detroit's prominent racketeers, were sentenced to serve terms ranging up to seven years.

On June 8, 1981, Brooklyn mob member Carmine Lombardozzi was convicted of tax offenses related to running a loan-sharking operation out of Intercoastal Management Corp., a company supposedly in the business of dealing in second mortgages.

## Drug Trafficking

On October 8, 1980, Peter Splain, the supervisor of Braniff Airlines cargo facility at JFK Airport, was convicted in Brooklyn of drug offenses involving smuggling tons of marijuana and hashish into the country from 1971 to 1979. The Drug Enforcement Administration believed the operation to be one of the most sophisticated they had encountered.

On December 19, 1980, syndicate leader Thomas Ralph Farese was convicted in Miami on drug importation and distribution charges. His network had extended as far north as Atlanta, Georgia, and possibly beyond. Farese, the Colombo family's leader in Florida, was given a 30-year sentence.

On December 18, 1980, the probation of Honolulu drug dealer John Chang Ho Lee was revoked and he was jailed for 15 years. The revocation was based on Lee's continuation in the drug business, sometimes with representatives of the Japanese Yakuza crime organization, plus incidents of extortion and murder.

On June 16, 1981, Giacchino Gagliano was convicted in Detroit for importing 22 pounds of heroin from Sicily hidden in a shipment of furniture. He was sentenced to eight years.

During the summer of 1981, the Boston Strike Force broke up a major drug ring operating in the Boston area. Some of the manufactured drugs handled by the group were apparently produced in a Massachusetts state prison. Almost \$1 million cash was seized during the arrests.

On July 31, 1981, Richard Marsico, Mario Adomo and eight others were convicted in Chicago for their role in importing over 100 pounds of heroin a month into the Chicago area.

Most of the attorneys in this section are assigned to Organized Crime Strike Forces and field offices operating in major cities across the country. The section's Washington, D.C.-based activities primarily involve liaison with the National Organized Crime Planning Council and formulation and coordination of general policies and litigative support services as required by field operations. One strike force based in Washington works to discover and prosecute infiltration of labor unions and legitimate business perpetrated on a national scale.

The section's jurisdiction over matters involving subjects associated with criminal organizations requires that it maintain close liaison with the FBI, Drug Enforcement Administration, Immigration and Naturalization Service, Internal Revenue Service, Bureau of Alcohol, Tobacco and Firearms, Secret Service, Postal Inspection Service, Customs Service, and the Office of Inspector General of the Department of Labor—plus state and local law enforcement agencies.

## Fraud Section

The Fraud Section directs and coordinates the federal effort against white-collar crime. It focuses primarily on frauds involving government programs and procurement, transnational and multidistrict trade, the security and commodity exchanges, banking practices, and consumer victimization.

The section's activities can be divided into three major categories: 1) the investigation and prosecution of major white-collar crime cases; 2) developing and implementing nationally coordinated white-collar crime enforcement policies; and 3) providing training to federal investigators and prosecutors.

With respect to the investigation and prosecution of white-collar crime, the section had major successes in the following areas during fiscal 1981:

1. *Fraud against the government* involving individuals; *program fraud* prosecutions of various types, including student loan fraud, Department of Housing and Urban Development/Veterans Administration (HUD/VA) mortgage loan fraud, Social Security fraud; *government procurement fraud*; and *major tax fraud* through the use of bogus tax shelters.

2. *Energy fraud* including a series of cases in Oklahoma, Texas, and other parts of the Southwest, concerning the miscertification of crude oil and enormous overcharges to consumers for petroleum products. These convictions resulted in the assessment and recovery of large criminal fines and refunds to the U.S. Treasury.

3. *Commodities/precious metals fraud* generally involving schemes using "boiler room" operations to defraud hundreds of investors in all parts of the country.

4. *Small business/consumer fraud* involving franchise fraud against small businesses and other consumers, and an extensive bankruptcy fraud case in which victims were defrauded out of millions of dollars.



5. *Bribery of foreign officials* involving the payment of illegal bribes to foreign officials. One case involved the payment of \$1.25 million to Puerto Rican officials to receive a \$92 million contract.

More specifically, the section was involved in the following major cases in 1981:

- *Crude oil/reseller miscertification cases.* These cases resulted in a series of convictions and guilty pleas, with the resulting criminal fines, civil fines and refunds to the U.S. Treasury totaling millions of dollars. Growing out of the so-called "Pipeline Investigation," which was initiated several years ago, these cases were brought to a successful conclusion, in large part, because the attorneys structured an investigative strategy that led to one guilty party after another and built on past successes. More indictments and convictions were expected.
- *Vending machine/small business fraud.* The section successfully prosecuted a series of vending machine/small business fraud cases involving multidistrict criminal activity in Pennsylvania. These cases resulted in a number of guilty pleas and convictions and significant jail terms for a number of the defendants.
- *HUD/VA mortgage fraud.* The section successfully investigated and prosecuted a series of HUD/VA mortgage fraud cases in Puerto Rico. These cases received extensive publicity in Puerto Rico and appear to have reduced the incidence of this type of fraud significantly there. Experience in these and other similar cases also allowed the section to identify a number of policies and procedures in administering these programs which created opportunities for fraud and made prosecution difficult or impossible. Suggestions communicated to HUD received a positive response.
- *Multinational fraud cases.* The section indicted several individuals and a corporation (*Interconex, Inc.*) in connection with a complex scheme to defraud Raytheon Corporation's subsidiary in Saudi Arabia of over \$1 million. More significant than the indictment, however, was the success the section had in procuring evidence from foreign countries and in laying the groundwork for cooperation in future cases. In connection with the *Interconex* case, section attorneys were successful in gaining evidence from several sources in Switzerland and, just recently, in establishing a cooperative relationship with the Attorney General of the Cayman Islands, the site of a number of bogus offshore banks. In addition, the section made some progress, with the Comptroller of the Currency and others, in developing a governmentwide, cooperative effort to combat fraud involving the use of offshore banks. Also, in February of 1981, the section successfully prosecuted General Electric Company and three individual defendants in connection with the payment of a \$1.25 million bribe to Puerto Rican officials in order to obtain a \$92 million contract.

- *Commodities/precious metals fraud.* The Fraud Section successfully prosecuted a number of commodities/precious metals fraud cases during fiscal 1981, resulting in the convictions of a number of individuals. In one case in California, after a 10-week trial, five defendants were convicted and sentenced to imprisonment ranging from one to seven years in connection with a precious metals fraud scheme.

In total, during fiscal 1981, 48 people and five corporations were indicted by the Fraud Section. During the same period, 65 defendants were convicted. While some of those convicted had not yet been sentenced by the end of the fiscal year, the sentences imposed as of that date resulted in the assessment of over \$1.5 million in criminal fines, over \$27.2 million in civil fines or settlements or other payments to the U.S. Treasury, and the forfeiture of a major interest in a seven-story office building.

Also in September 1981, the Criminal Division established an interagency task force, headed by the Fraud Section, to curb food stamp abuse. The Food Stamp Task Force is coordinating a major effort to investigate and prosecute food stamp fraud by targeting 12 of the nation's metropolitan areas. During fiscal 1981, the Fraud Section indicted 48 people and five corporations, and convicted 65 defendants.

The section played a major role in the formulation and implementation of the Department's national white-collar crime priorities and in overseeing the development of white-collar crime priorities in approximately 30 federal districts. The section will be involved in the development of priorities in the remaining 65 districts during fiscal 1982. The section has also been actively involved in a number of interagency groups created to enhance the federal government's efforts to combat white-collar crime—including the President's Council on Integrity and Efficiency, the Interagency Task Force on Debarment and Suspension of Government Contractors, and others. In addition, the section has taken an active role in assisting government agencies in modifying or eliminating policies and procedures that create opportunities for fraud, waste, abuse, and corruption. The section is frequently involved in preparing or commenting on proposed legislation and in presenting testimony to Congress.

More specifically, among the more significant of the Fraud Section's accomplishments during 1981 are the following:

- *Deputy Attorney General's Policy Statement on Inspector General/DOJ Relationship.* The section was directly involved in the development of the Deputy Attorney General's June 3, 1981, Policy Statement and is now working toward its full implementation. An informal oversight committee was established under the leadership of the Section Chief to work with the FBI, the Inspectors General, U.S. Attorneys and others in resolving differences concerning jurisdiction, referral patterns and related issues.

- *Development of the FACT System.* The Fraud Section, working with the Office of Policy and Management Analysis, developed the Fraud and Corruption Tracking (FACT) System. The FACT System will collect important information concerning fraud and corruption cases referred to the Department for prosecution. The System promises to be a valuable tool in enhancing the federal government's efforts to combat fraud, waste, abuse and corruption.
- *Advice to agencies regarding policy and procedures.* As mentioned above, as a result of its work on HUD/VA mortgage fraud cases, the section was able to detect a number of policies and procedures that created opportunities for fraud and abuse and/or made criminal prosecution difficult. The section's observations and suggestions, communicated to HUD, received a positive response. A similar letter was sent to Health and Human Services regarding opportunities for fraud in the Home Health Agency program. The suggestions were noted during Congressional hearings. The section also prepared testimony for presentation to Congress regarding abuse of the Farm Disaster Assistance Loan Program administered by the Small Business Administration.

Fraud Section attorneys were active in fiscal 1981 in providing training to federal investigators and prosecutors in a number of different settings—including the Federal Law Enforcement Training Center; FBI Academy; Criminal Division's White-Collar Crime Mini-Course; Attorney General's Advocacy Institute; and various Inspector General meetings. During the year, more than 2,000 investigators and prosecutors received training from section attorneys on investigative techniques and strategy, trial preparation, trial advocacy, and related topics.

The Office of Economic Crime Enforcement is included in the Fraud Section, and is a joint U.S. Attorney/Criminal Division program. Its mission is to establish approximately 10 Economic Crime Enforcement Units in regional centers throughout the nation to be focal points for efforts against fraud and public corruption. These units coordinate federal white-collar crime enforcement efforts in their regions, especially through liaison with Inspectors General, and prosecute complex cases. Each unit is part of a U.S. Attorney's Office.

Section activities require expertise across broad areas of law and commerce—including regulatory law, tax law, banking, government programs, procurement practices, and interstate and international trade. The section's policymaking, litigation, and litigation support activities involve close liaison with the federal investigatory agencies, the 15 statutory Inspectors General, the Securities and Exchange Commission, the Commodity Futures Trading Commission, the Department of Energy, and all U.S. Attorneys.

The most significant accomplishments for fiscal 1981 include:

- Refocusing the program; specifically, redirecting the efforts
- of the specialists to work more extensively with the Inspectors General in the governmental program and procurement area;
- Presenting a fourth economic crime enforcement conference, March 31-April 3, 1981, in Washington, D.C., in conjunction with the Fraud Section and the U.S. Trustees;
- Creating Medicare/Medicaid task forces in Philadelphia and Detroit; creating arson task forces in Pittsburgh and Detroit;
- Winning important cases arising out of program initiatives, including arson convictions in Detroit and Pittsburgh; a doctor/lawyer phony accident ring conviction in New Haven; indictment and pleas by the presidents of the two largest savings and loan institutions in New Orleans;
- Winning white-collar crime and corruption cases generally, including 56 convictions obtained by the specialist in Providence, Rhode Island;
- Running the Atlanta summer youth program monitoring project, which was highly successful in preventing program fraud;
- Publishing an Annual Report to the Attorney General on the status of the program;
- Coordinating the Criminal Division's involvement in the food stamp fraud investigation; and
- Sponsoring regional meetings of Inspectors General, U.S. Attorneys, investigators and prosecutors in Atlanta, October 1, 1981, and in Boston, August 19-20, 1981.

## Narcotic and Dangerous Drug Section

The Narcotic and Dangerous Drug Section prosecutes high level drug traffickers and members of criminal organizations involved in the importation, manufacture, shipment, or distribution of illicit narcotics and dangerous drugs.

It also works for the forfeiture of assets illegally obtained as a result of illicit drug trafficking and is responsible for the analysis and execution of the Criminal Division's drug prosecution policies.

In addition, the section trains agents and prosecutors in the development of major drug litigation, and supports narcotic litigation in all U.S. Attorneys' Offices.

The section's litigation includes criminal prosecutions under the Continuing Criminal Enterprise Statute, the RICO Act, the Internal Revenue Code, the Comprehensive Drug Abuse Prevention and Control Act of 1970, and the Bank Secrecy Act. The section has organized a special Tax Enforcement Narcotic Unit with the Criminal Section of the Tax Division to prosecute tax offenses committed by major drug traffickers. In Operation Greenback, the section conducts task force operations around the country to investigate and prosecute money laundering activities of major drug traffickers.

In addition to litigation, the section evaluates the operation of Major Drug Trafficker Prosecution Units in 25 U.S. Attorneys' Offices. It drafts and evaluates drug-related legislation and pro-

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vides legal support to U.S. Attorneys by securing witnesses from foreign jurisdictions, by assisting in the coordination of multidistrict prosecutions, and by publishing a monthly Narcotics Newsletter on developments in narcotics enforcement.

The section maintains a close working relationship with all the U.S. Attorneys' Offices, the Drug Enforcement Administration, the FBI, the Customs Service, the Internal Revenue Service, the Immigration and Naturalization Service, the Coast Guard, and the Bureau for International Narcotics Matters at the Department of State.

Major accomplishments in fiscal 1981 included establishment of Operation Greenback task force offices in Tampa and Chicago, the preparation with the Drug Enforcement Administration of "A Ten Year Assessment of the RICO and CCE Statutes in Drug Enforcement Administration Narcotics Cases," and the incorporation of a basic drug conspiracy training program for new federal prosecutors in the training curriculum of the Attorney General's Advocacy Institute.

In Operation Grouper, the section supervised the prosecution of 167 individuals in 28 indictments filed in seven judicial districts. Operation Grouper was a two-year Drug Enforcement Administration undercover operation which successfully infiltrated 20 high level marijuana and cocaine smuggling organizations. It resulted in the seizure of more than 1.2 million pounds of high-grade Colombian marijuana, 827 pounds of pure cocaine, 133 pounds of quaaludes, three million methaqualone tablets, and \$10,630,000 in assets. To date, 112 defendants have been convicted in 18 trials.

In Operation Greenback, in which the Division has worked closely with U.S. Attorneys, 14 money-laundering indictments were filed against 51 defendants. Bails were set as high as \$5 million in some cases due to the substantial criminal drug wealth controlled by the individuals involved. The total seizure of currency in Operation Greenback exceeds \$20 million. In the Operation Greenback case of *United States v. Isaac Katton, et al.* the money laundering group was charged with washing \$2.2 million through Miami banks in four months and possessing 20 kilograms of cocaine. Kattan has been sentenced to 30 years in prison and \$3 million has been seized by Swiss authorities from Kattan's Swiss bank accounts. As a result of this and other Operation Greenback prosecutions and investigations, Bank Secrecy Act compliance in south Florida has increased by 400 percent.

## Public Integrity Section

The Public Integrity Section coordinates federal efforts against corruption of public officials at all levels of government, carrying out enforcement of one of the Attorney General's criminal justice priorities.

The section's broad mandate is to oversee enforcement of all federal statutes dealing with bribery, conflicts of interest, election fraud, and other public corruption. It prosecutes selected

cases against federal, state, and local officials who have abused their public trust, and is available to advise law enforcement officials and prosecutors at all levels of government. The section has skilled litigators who are trained to prosecute cases under the complicated criminal statutes that govern the conduct of public officials. It is also a center for planning, coordinating and implementing of nationwide programs against public corruption.

Its functions include: overseeing enforcement of all federal criminal statutes governing the conduct of federal officers and officials; developing new investigative and prosecutorial techniques against public corruption, and training others in their use; coordinating the nationwide enforcement of election fraud statutes; using its enforcement jurisdiction over state and local corruption to target problem areas; investigating and prosecuting all matters involving crimes by federal judges; handling public corruption cases when the local U.S. Attorney's Office has recused itself; providing U.S. Attorneys' Offices with specialized expertise and litigative support, especially in large, complex, or multi-regional corruption cases; reviewing and processing all matters referred to it under the Special Prosecutor's Bill; and participating in the development of more effective laws dealing with public integrity.

During 1981, election crimes growing out of the 1980 election cycle were a priority of the section. A major probe into election fraud and corruption in South Carolina resulted in 29 convictions—including a state senator, the Democratic Party chairman for Dillon County, a former county sheriff, and county councilmen. Similar probes resulted in convictions in Pennsylvania, Kentucky, Missouri, Georgia, Louisiana, Oklahoma, and Mississippi.

Other public corruption cases in 1981 included the conviction of a senior officer of the Agency for International Development for accepting large sums of money in exchange for arranging the award of seed rice contracts intended to benefit Cambodian refugees. A scheme to sell entry visas permitting aliens to enter the United States was uncovered and successfully prosecuted. The section brought the first criminal patronage prosecution in a quarter of a century, involving Census Bureau officials, and obtained the convictions of those involved.

A Conflicts of Interest Crimes Branch was established within the section in 1981 to coordinate handling of complex cases which include improper participation by federal employees in matters affecting their financial interests, and the violation by former employees of prohibitions on participation in matters in which they formerly represented the government. The branch has already initiated several significant investigations into allegations regarding conflicts of interest. It is also ensuring that effective liaison is maintained among the government bodies that consider conflicts of interest issues.

The section's responsibility for overseeing and participating in active litigation requires close and continuous cooperation with many U.S. Attorneys, and with the Public Corruption units of the



**FBI.** The development of Offices of Inspectors General within federal agencies has provided the section with new opportunities for interagency coordination of investigations. Because of financial overtones to many crimes committed by public officials, the section also maintains frequent liaison with the investigative offices of the Internal Revenue Service. The section offers advice and prosecutive support to state and local law enforcement officials in appropriate cases.

## Internal Security Section

The Internal Security Section is responsible for enforcement of criminal statutes affecting national security and foreign relations. The section also administers and enforces the Foreign Agents Registration Act of 1938, as amended, and related statutes.

Section functions include: supervising the investigation and prosecution of offenses involving treason, espionage, sabotage, and violations of the Atomic Energy Act, neutrality statutes, the Trading With the Enemy Act, and the Arms Export Control Act; providing policy guidance and litigative support to U.S. Attorneys, intelligence services, and law enforcement agencies involved in cases related to internal security or foreign relations; administering and enforcing the Foreign Agents Registration Act through civil and criminal prosecutions, as well as supervising investigations and conducting inspections pursuant to the Registration Act; providing specialized legal support to U.S. Attorneys in areas of policy interpretation, legal research, and the drafting of indictments, pleadings and other legal papers; serving as the focal point for interagency coordination in cases such as espionage, neutrality, and arms export control violations; developing, analyzing, and evaluating proposed legislation relative to the internal security field; and providing personnel, including the Executive Secretary, for the Interdepartmental Committee on Internal Security (ICIS).

The most significant cases during the past year included: David Henry Barnett, a former employee of the Central Intelligence Agency, pleaded guilty to one count of violating the Espionage Act on behalf of the Soviet Union, and was sentenced to 18 years; William Holden Bell, an engineer employed by Hughes Aircraft Company, and Marian Zacharski, a Polish intelligence operative, were charged in Los Angeles, California, with both espionage and conspiracy to commit espionage for transmitting classified documents on military aircraft and weapons systems to the Polish Intelligence Service from 1978 to 1981; Joseph G. Helmich was charged in a four-count indictment with conspiracy to commit espionage and three substantive counts of espionage for transmitting classified information relating to sensitive communications data and equipment to agents of the Soviet Union during 1963 and 1964, while he was a U.S. Army Warrant Officer stationed in Paris, France, and Fort Bragg, North Carolina. After his trial began, Helmich pleaded guilty to one count of espionage which carries a maximum term of life imprisonment.

In addition to the espionage cases, Anatoli T. Maluta, Sabrina

D. Tittel, Werner J. Bruchhausen and Dietman Ulrichshofer were named in a 60-count indictment charging violations of the Arms Export Control Act and the Export Administration Act and other related offenses in connection with the unlicensed export of military and strategic commodities to the Soviet Union, Soviet Bloc countries, and other destinations. Spawr Optical Research Inc., Walter J. Spawr, and Frances Spawr were convicted of violations of the Export Administration Act and related offenses resulting from exportation of a large quantity of laser mirrors to the Soviet Union between July 1976, and February 1977.

In one of the largest weapons seizures in the history of law enforcement, John Parks and Peter Towers were arrested and charged with violations of the Arms Export Control Act and related offenses for attempting to export a large quantity of M16 rifles, grenade launchers, and handguns to the Republic of South Africa. Two high ranking officers of the Nicaraguan Air Force entered guilty pleas to a charge of attempting to violate the Arms Export Control Act after they were arrested while attempting to fly two military type helicopters from the United States to Nicaragua. Michael Perdue and nine other individuals were arrested in New Orleans in the act of launching a military expedition to overthrow the government of the Caribbean island of Dominica. Two defendants were convicted and seven defendants pleaded guilty to a violation of 18 U.S. Code 960 (launching a military expedition) and were sentenced to imprisonment for three years. Six of seven anti-Castro Cuban exiles were arrested in the act of launching a military expedition against Cuba from Marathon, Florida—and they pleaded guilty and received sentences of 18 months. Geils and Foerst Marine Electric, Inc., pleaded guilty to violations of the International Emergency Economic Powers Act, conspiracy, and related offenses for exporting \$412,000 worth of welding equipment to Iran.

This section is the focal point of much of the liaison activities involving other federal departments and agencies—particularly federal investigative agencies and intelligence agencies which deal with cases and matters concerning our national security and foreign relations.

During fiscal 1981, registrations under the Foreign Agents Registration Act increased by 125, bringing the total to 3,277, as of June 30, 1981—of which 664 are active. There were 659 new short-form registrations in fiscal 1981, and approximately 6,431 are active. Pursuant to its statutory responsibility, the section prepared a 515-page "Annual Report of the Attorney General to the Congress of the United States on the Administration of the Foreign Agents Registration Act."

In a case styled *Attorney General v. The Irish Northern Aid Committee*, the District Court for the Southern District of New York granted the government's motion for a summary judgment. In its most significant finding, the court determined that The Irish Northern Aid Committee acts as an agent of the Irish Republican Army and must register as its agent. The court also held that the defendant must disclose its relation to *The Irish People*, a weekly

newspaper. The court held that the Irish Northern Aid Committee has continually ignored the requirements of the Foreign Agents Registration Act dealing with "political propaganda."

Section personnel represent the Department on four of five subordinate groups of the ICIS. The section provides the executive secretary of the ICIS, which is directed by its charter to effect the coordination of all phases of the internal security field—except those specifically assigned to the Interdepartmental Intelligence Conference. It takes action necessary to ensure the highest practicable state of internal security, including planning and preparing for adequate internal security in the event of a war-related emergency. ICIS is comprised of representatives of the Departments of Justice, State, Defense, and Treasury. The Justice representative also serves as the Committee's chairman and is appointed by the President. During fiscal 1981, ICIS developed a Defensive Security Briefing to be provided any regular or contract employee of the Executive Branch of government traveling to Communist-dominated societies, either on government business or for personal reasons. This briefing, approved by the National Security Council on November 19, 1980, was distributed to 51 federal departments and agencies.

## **General Litigation and Legal Advice Section**

The General Litigation and Legal Advice Section has broad criminal jurisdiction which encompasses almost 75 percent of all federal criminal statutes. It also has a variety of civil responsibilities.

The section's jurisdiction covers six major areas: 1) Crimes Against Government Operations, e.g., attacks on designated federal officials—including the President, Vice President, and members of Congress; candidates for federal office, foreign officials, and official guests of the United States; violations of the Selective Service Act; counterfeiting; obstruction of justice; perjury; escape; prison offenses; and customs violations; 2) Crimes Against The Public, e.g., aircraft and maritime piracy, kidnapping, extortion, bombing, bank robbery, illegal electronic surveillance, copyright infringements, obscenity, and firearms violations; 3) Immigration and Naturalization matters, e.g., defense of civil suits challenging Immigration and Naturalization Service procedures or practices, defense of appeals taken from deportation proceedings, initiation of denaturalization proceedings, and prosecution of alien smuggling violations; 4) Regulatory Enforcement, e.g., protection of safety, health and consumer interests in mining and other occupations, nuclear materials handling, marketing of agricultural products, and disposition of hazardous and toxic wastes; 5) Special Civil matters, e.g., defense of civil actions to obtain information on or to interfere with criminal justice and national security operations, and enforcement of forfeitures and civil penalties imposed pursuant to violations of Criminal Division statutes; and 6) Prison and Parole matters, e.g., defense

of suits challenging legality of federal sentences, probation and parole actions, conditions of confinement, prisoner transfer within the United States and from foreign custody to the United States, and treatment of mentally incompetent prisoners.

The section's functions are equally broad as indicated by this summary of responsibilities: 1) It serves as an enforcement section in certain key areas where special requirements dictate centralization. In these areas, the section is directly involved in case development and litigation. 2) The section performs a general litigation function, handling litigation under any of its vast range of statutes when appropriate due to recusal or lack of resources or pertinent expertise in a particular U.S. Attorney's Office. 3) It provides legal advice on any of its statutes—or issues emanating its actions—to U.S. Attorneys' Offices as well as to investigative and client agencies.

The section combats terrorism through exhaustive investigations and vigorous prosecution of persons responsible for terrorist acts. Central coordination of the prosecutive response to terrorism is essential because of the critical importance of the enforcement effort to the nation, the multidistrict nature of many terrorist acts, the sensitivity of the investigations, and problems of statutory applicability. The section's participation begins at the outset of major investigations requiring assistance in certain investigative techniques, including grand juries. The section's enforcement initiative pertaining to regulatory violations involving a serious threat to human life has been designated by the Attorney General as a Department priority. Working arrangements are in effect with the Mine and Occupational Safety and Health Administration (MSHA and OSHA), the Environmental Protection Agency (EPA), and the Nuclear Regulatory Commission (NRC) for the effective development and referral of major cases. Statutory requirements or section policy limit prosecutions to: cases where a death has resulted (OSHA); cases where death, serious injury, or fraud is present (MSHA); or where there have been deliberate or reckless indifferences to NRC statutes and regulations by operators of nuclear plants or those handling radioactive materials. Criminal enforcement of EPA regulations is limited to cases involving the illegal dumping of poisonous or hazardous chemicals or wastes in the countryside or waters.

The section has assumed responsibility for the enforcement of registration under the reimplemented Selective Service Act. Prosecutive policies have been developed, memoranda concerning prosecution procedures and essential elements of a nonregistration prosecution have been prepared, and alleged violations have been referred to the Federal Bureau of Investigation.

Examples of the section's accomplishments in 1981 included:

- The conviction of three defendants in the Eastern District of North Carolina for conspiracy to violate the Munitions Control Act and the Gun Control Act, as well as substantive firearms violations, by the illegal purchase of military-type weapons and their illegal exportation to the Irish Republican Army;

- The conviction of Wes-Con, Inc., in Idaho for violations involving the illegal disposal of polychlorinated biphenyls (PCBs). This was the first conviction under the Toxic Substances Control Act;
- The conviction of a niece of Senator Thomas F. Eagleton and her attorney for attempting to extort money from the Senator;
- The indictment of the owner of a national trucking firm and three former American Airlines executives in a kickback scheme whereby the trucking firm made payoffs to the executives in exchange for freight business from American Airlines;
- The defense of civil cases arising out of the seizure of commercial vessels participating in the "Cuban Flotilla;"
- Launching of a multidistrict grand jury investigation of fraud and abuse by college and school officials in the issuance of visas for foreign students entering the United States.
- The indictment in the Northern District of California of Pacific Steel and Supply Company, its president, and an employee of Mitsui and Company, Ltd., a large Japanese trading company, for a pervasive scheme to circumvent U.S. dumping laws;
- Negotiation of a settlement keyed to the former Administration's Cuban-Haitian entrant program of a class action suit filed in the Southern District of Florida by Haitian aliens seeking the return of approximately 3,000 work authorizations which had been revoked by the Immigration and Naturalization Service;
- The successful defense of efforts by the Immigration and Naturalization Service to commence exclusion hearings against excludable Haitians, after a district court had prohibited exclusion hearings from occurring;
- The indictment of the wife of a suspect in the Northern District of Texas for purchasing a gun under a false name that was similar to a weapon that may have been used to kill Judge John H. Wood, Jr.;
- The development of policy and coordination of prosecutions arising out of the strike by the Professional Air Traffic Controllers Organization;
- The preparing and filing of 157 briefs and 198 motions and other pleadings on immigration and nationality in the courts of appeals;
- The arguing of 62 immigration and nationality cases in the courts of appeals, as well as the filing of 58 district court pleadings and appearing in 14 district court proceedings; and
- The handling of 205 petitions for remission or reconsideration of forfeiture.

## Appellate Section

The Appellate Section works to secure favorable constitutional and statutory interpretations in criminal cases on appeal before the U.S. Supreme Court and the 12 U.S. Circuit Courts of Appeals.

Its functions include: preparing briefs in opposition to petitions for *certiorari* to the U.S. Supreme Court; securing favorable precedents by making appropriate recommendations to the Solicitor General for or against the review of adverse decisions in the U.S. district courts or courts of appeals, briefing and arguing significant criminal appellate cases before the federal courts of appeals; reviewing appellate briefs prepared by Assistant U.S. Attorneys; and providing general assistance to U.S. Attorneys and the Assistant Attorney General on appellate matters, legislative research, and other special projects.

The section's Supreme Court activity during fiscal 1981 included 19 briefs on the merits and 13 government petitions for *certiorari*. The section also drafted responses to a total of 362 petitions for *certiorari*. In only three of the cases that were disposed of by the Supreme Court last term did the Supreme Court grant *certiorari* over the section's opposition.

The non-Supreme Court workload handled by the section during fiscal 1981 included 791 recommendations to appeal adverse decisions, 521 memoranda to the Solicitor General, and 219 briefs, petitions, and other pleadings in the courts of appeals.

Section attorneys maintain close liaison with all litigating entities of the Department. Of particular significance is the section's relationship to the Office of the Solicitor General, which has responsibility for all arguments on behalf of the government before the Supreme Court.

During 1981, the Appellate Section continued to shift its focus from Supreme Court work to court of appeals work. The section prepared 219 briefs in court of appeals cases, compared with 195 in fiscal 1980, and 101 in fiscal 1979. During that same period, the section reduced the number of Supreme Court oppositions prepared, from more than 600 in fiscal 1979 to 362 in fiscal 1981.

In the Supreme Court, the United States did well in criminal cases, winning eight of the nine Criminal Division cases decided. Among the most important victories were *United States v. Turkette*, which upheld the application of the federal racketeering statute to illegitimate enterprises, and *United States v. DiFrancesco*, which upheld the government's right to appeal from a sentence in a criminal case. The Supreme Court denied almost 1,000 petitions for *certiorari* from defendants in federal criminal cases during the 1980 term, while granting *certiorari* on the defendants' petitions in only three cases.

In the courts of appeals, the section continued to have a high success rate. The section continued to represent most of the Strike Force offices in the courts of appeals, and it undertook a number of appellate cases on behalf of U.S. Attorneys' Offices that were backlogged with appellate work. To handle the increased volume of appellate work, the section implemented a new case management system that processed appellate cases more efficiently.



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## Office of Enforcement Operations

The Office of Enforcement Operations oversees, within the constraints of law and Department policy, the effective use of the most sophisticated investigative tools at the Department's disposal—including electronic surveillance, hypnosis in the interrogation of witnesses, and witness relocation.

The office supervises all aspects of the Witness Security Program for the Criminal Division and responds to Congressional, White House, press, and public inquiries regarding the Witness Security Program. It also receives and adjudicates all requests for use of the Division's confidential funds, and all applications for electronic surveillance under Chapter 119 of Title 18 of the U.S. Code. It oversees all electronic and consensual monitoring efforts being pursued within the federal justice system, and prepares special analyses and evaluation reports relating to such activities.

The office continuously monitors each of those programs, and serves as liaison to investigative agencies, prosecutors, the U.S. Marshals Service, the Bureau of Prisons, and others involved in the implementation of these investigative tools.

During the year, 260 witnesses and their families entered the Witness Security Program. A total of 202 applications for court-approved intercepts of communications were received—of which 29 were withdrawn and four denied. A total of 10,782 requests were approved for consensual use of electronic devices. The voluntary use of hypnosis to interrogate witnesses was approved in 115 cases.

## Office of International Affairs

The Office of International Affairs supports the Division in the formulation and execution of international criminal justice enforcement policies.

Its functions include: participating in the negotiation of international agreements and treaties on subjects relating to criminal law enforcement; representing the Division in Executive Branch policy planning sessions when issues of international criminal justice are under consideration; negotiating, executing, and overseeing extradition, judicial assistance, and prisoner transfer arrangements; preparing, processing and directing extradition matters forwarded by the Department of State before federal courts; providing advice to U.S. Attorneys and state attorneys general on preparing extradition requests and on international foreign practice and procedure; coordinating and reviewing all requests to and from foreign governments and courts to obtain evidence for criminal matters being investigated or prosecuted in the United States; drafting legislation relating to its functions; and developing Division policy on those aspects of federal criminal law enforcement that require extraterritorial involvement.

During fiscal 1981, the office participated in negotiations on: extradition treaties with Italy, Thailand, Organization of American States, and the Philippines; treaties on mutual legal assistance

in criminal matters with Italy, Federal Republic of Germany, the Netherlands, and Mexico; treaties on prisoner transfer arrangements with Thailand and the Council of Europe; and a treaty for the recovery and return of stolen vehicles and aircraft with Mexico.

The office participated in the return to the United States of approximately 40 fugitives and caused the removal of approximately 30 foreign fugitives. The office directly represented foreign governments in court in 11 extradition proceedings, and has arranged for the return to their native countries of 43 aliens in exchange for the return to this country of 53 U.S. citizens.

The office developed several innovative ideas within the year that, it believed, should assist the United States in combating crime and international terrorism. It recommended, and the Department of State agreed, that all future extradition and mutual assistance treaties should include several new articles that recognize the need for broader and far-reaching means of dealing with international fugitives and their activities.

One recommendation in extradition treaties would cause a negotiating partner, even if that country does not extradite its citizens, to send them to the United States solely for the purpose of trial and sentencing if service of any sentence imposed can be accomplished in the native country. Another would permit the temporary surrender, for purposes of trial and sentencing, of fugitives, regardless of citizenship, who are serving prison sentences in the requested country.

For mutual assistance treaties the office drafted a provision requiring, with safe conduct, the attendance of witnesses before the courts of the negotiating partner. Another proposal would permit the immobilization of assets and the forfeiture of such funds if unlawfully obtained.

The functions of the office require continuing contact with the Department of State and other foreign affairs agencies of the federal government, all of the federal investigative agencies, and departmental units involved in international prosecutions, as well as direct contacts with foreign ministries of justice and foreign affairs, and foreign embassies in Washington, D.C.

## Office of Legislation

This office contributes to the Division's policy formulation through the systematic review, analysis, implementation and evaluation of criminal justice legislation and other Congressional actions.

In most areas of Congressional activity, there are many organizations, both public and private, engaged in assisting the Congress through the drafting and analysis of legislative proposals. Criminal legislation, however, is not the beneficiary of such widespread public interest. As a result, the Criminal Division has endeavored to devote substantial resources to the development and support of measures to revise and improve the federal criminal justice system.

Functions of the office include: developing, in cooperation with other federal justice agencies, legislative proposals, legal memoranda, and statements to be given before Congress by officials of the Department; drafting responses to inquiries from Congressional committees and government agencies concerning proposed legislation; preparing legal memoranda relating to the implementation of recently enacted statutes and requesting substantive opinions and recommendations on legislation from the Division's sections and offices for presentation to the Congress.

Principal accomplishments during 1981 include participation in the development of a revised Criminal Code Reform Act which has been introduced as S. 1630 with strong bipartisan support and the endorsement of the Administration. This complete revision of Title 18, U.S. Code, would establish a modern and conceptually uniform Federal Criminal Code. The office also drafted a comprehensive series of amendments to the tax disclosure provisions of the Internal Revenue Code to facilitate appropriate disclosures of tax information to federal law enforcement agencies for use in the investigation and prosecution of nontax crimes. In addition, the office played a major role in development of amendments to Title 10, U.S. Code, pending at the close of the fiscal year before a joint House-Senate conference committee, to increase military support for civilian law enforcement efforts, particularly in connection with detection and surveillance of smuggling ships and aircraft transporting narcotics, contraband and illegal aliens into the United States. Other legislative accomplishments include contributions to Congressionally initiated legislation pertaining to capital punishment, bail reform, criminal forfeitures, protection of Cabinet officers and other high level officials and mandatory sentencing. The office also assists in the implementation of newly enacted statutes. During 1981, these activities included development and issuance of Department guidelines required by the Privacy Protection Act of 1980 and the Classified Information Procedures Act of 1980.

## Office of Special Investigations

The Office of Special Investigations (OSI), established in May 1979, investigates and prosecutes Nazi war criminals living in the United States. The legal framework within which the office operates is the Immigration and Nationality Act, which provides specific provisions for dealing with persons involved in war crimes.

The office has a staff of 50 persons—including 20 attorneys, four paralegals, six historians, three investigators, and additional support staff.

Contacts with major organizations of Holocaust survivors on a worldwide basis were expanded and solidified during fiscal 1981. For the first time, survivors located through this network are now being scheduled to testify. Moreover, significant progress continued in the year in maintaining and enhancing the cooperation and exchange of information with the Soviet Union which, being the source of much of our evidence, is crucial to the OSI mission.

During fiscal 1981, six denaturalization and deportation cases were prosecuted and eight new cases were filed. Of particular interest is the *Fedorenko* case. On January 21, 1981, the Supreme Court affirmed the decision of the court of appeals, holding that Fedorenko's citizenship had been procured illegally and therefore must now be revoked. On March 5, 1981, OSI began deportation proceedings.

The OSI implemented several management improvement initiatives during the fiscal year to provide a more effective division of labor and to enhance the work product. Particular emphasis was placed on:

- Maximizing the accuracy and cost-effectiveness of foreign language translations by using contractors as opposed to exorbitantly expensive commercial translators;
- Travel and budget monitoring by implementation of an in-house tracking system for travel commitments and general budget expenses that allows quick and accurate financial position determination at any given time;
- Compilation of an administrative trial manual incorporating details on the many aspects of arranging a trial, thus minimizing oversights and establishing procedures that work best for OSI;
- Compilation of a Central Index of Survivors (CIS), cross-indexed by village, concentration camp, etc., facilitating quick and efficient retrieval of information on potential witnesses.

## Office of Legal Support Services

The Office of Legal Support Services provides a wide range of services related to litigative and prosecutive support to various components of the Division, the U.S. Attorneys, and other federal prosecutors.

Its functions include processing all requests for authorizations to compel testimony in federal prosecutions and Congressional inquiries (immunities), as well as making the final recommendations to the Assistant Attorney General on granting or denying such requests; adjudicating all public requests for access to Criminal Division records pursuant to the Freedom of Information Act and the Privacy Act; processing all requests to the Internal Revenue Service for access to income tax returns and related information; processing all requests to subpoena members of the news media for testimony in criminal procedures; preparing a history of all legislation enacted by the Congress that affects the responsibility of the Criminal Division; compiling, indexing, and maintaining a file of all Division legal briefs and memoranda that involve policy matters or extensive legal research; coordinating, with other Division components, the preparation of the Criminal Division's contribution to the U.S. Attorneys' Manual and other Department reports; processing requests for electronic surveillance checks directed to the several federal investigative agencies;

made in criminal prosecutions pursuant to 18 U.S. Code 3504; responding to citizen inquiries on criminal law matters, preparing grand jury letters authorizing Division attorneys to conduct and attend grand jury sessions; responding to requests for authorizations of Department personnel to testify at federal, state, and local civil and criminal proceedings; coordinating the collection of criminal fines and bond forfeiture judgments by the U.S. Attorneys; processing requests from the U.S. Attorneys for access to information filed with the Secretary of the Treasury under the Currency and Foreign Transactions Reporting Act; and collecting and preparing a monthly report of significant criminal cases and matters of the Division components and the U.S. Attorneys, as well as collecting briefing matters and reports of significant criminal matters for the Attorney General.

In fiscal 1981, the Collection Unit for the first time actively assisted U.S. Attorneys in the discovery process of complex and difficult cases, such as assisting in obtaining a preliminary injunction in Michigan against a major New York City heroin dealer who has been sentenced to life. The action enjoined the defendant from diverting \$125,000 payable as part of an uncollected fine, pending final determination of the case. Such increased emphasis on collections of criminal fines and bond forfeitures was reflected in the \$21,589,959 collected in the first 11 months of fiscal 1981, compared with \$13,816,943 in the preceding fiscal year.

Other major accomplishments in fiscal 1981 included the processing of the following: 1,686 requests for immunity involving a total of 3,271 witnesses; 6,536 letters from the public, of which 2,285 were White House referrals and 718 from Congressional sources; 350 requests for Internal Revenue Service taxpayers' returns and information; 136 requests for testimony by Department personnel in civil or criminal proceedings; and 61 requests for electronic surveillance checks. In addition, the office received 903 requests under the Privacy Act and 556 requests for Freedom of Information (FOI) material. The FOI Multinational Task Force, organized to handle the massive FOI request from a national newspaper investigating corporate foreign payments, furnished during fiscal 1981 the schedules of investigatory files pertaining to some 414 corporations. In accordance with terms of a stipulation filed in litigation involving the FOI request, access was requested during the year from 15 of the 414 schedules and 12 of the schedules were processed to completion.

The wide range of responsibilities assigned to the office entails close liaison with all of the federal investigative agencies, the U.S. Attorneys, the Executive Office for U.S. Attorneys, and the administrative staff of the Division and the Department.

## **Office of Policy and Management Analysis**

The Office of Policy and Management Analysis completed its second year of operation during fiscal 1981. It is responsible for

performing analysis and recommending positions on policy issues of concern to top-level decisionmakers in the Division and the Department. It also assists division managers in implementing new enforcement programs and managing the Division's resources.

The office's work includes seven major functions: developing recommendations on issues affecting the role, functions, and mission of the Division; advising the Assistant Attorney General on the establishment of priorities and objectives for the Division and for federal law enforcement generally; developing plans for enforcement programs in conjunction with the Division's litigation sections; conducting evaluations of existing law enforcement programs and policies; advising the Assistant Attorney General on issues of budget policy and resource allocation; developing improvements in the Division's management systems and practices; and providing for the exchange of information and the coordination of policies, programs, and research with other public agencies and private institutions in the field of law enforcement.

The office uses an interdisciplinary approach to decisionmaking and problem-solving. Its professional staff includes attorneys, program analysts, and management analysts with expertise in public and business administration, economics, organizational behavior, program evaluation, information systems, data processing, financial analysis, and operations research.

Examples of projects in which the office has played a major role include the development of national priorities for the investigation and prosecution of white-collar crime. As part of the implementation process, U.S. Attorneys in 31 judicial districts were asked to establish district level priorities tailored to their local problems and needs. By the end of the year, 20 U.S. Attorneys had completed this process and had their priorities approved by the Department. Other efforts include the analysis of proposed actions to strengthen federal drug enforcement; the implementation of a case management information system for the Division's enforcement sections; the creation of a Divisionwide management review process; the design of an evaluation system for the organized crime strike force program; and the development of enforcement initiatives to assist the Inspectors General in combating government program fraud.

## **Office of Administration**

The Office of Administration provides administrative support services to each of the enforcement services, staff offices, and field units of the Division.

Its work involves assisting in the formulation and implementation of plans for efficient administrative management; working with the Office of Policy and Management Analysis to develop and compile the annual budget estimates of the Division; planning and executing the fiscal operating plan for the current year; administering management programs dealing with the delivery,



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maintenance, storage and use of federal records and official correspondence; coordinating personnel processing functions within the Division; assisting in the collection and dissemination of caseload and workload statistics; maintaining and procuring inventories of supplies, equipment, and furniture; processing requests for workspace, telephone changes, office renovations and equipment repairs; administering a variety of miscellaneous support services, such as travel vouchers and advances, travel reimbursements, duty station transfers, parking permits, identifica-

tion cards, duplicating services, printing requisitions, and the distribution and maintenance of Division handbooks and manuals; ensuring the security of classified and sensitive materials; and inspecting the Division's workspace to assure compliance with Occupational Safety and Health Administration standards.

The office's wide range of duties requires close liaison with all of the Division's components, the Justice Management Division, the General Services Administration, and contractor personnel associated with the Division.

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## **Executive Office for United States Attorneys**

**William P. Tyson**  
**Director**

Under the supervision of the Deputy Attorney General and the Associate Attorney General, the Executive Office for U.S. Attorneys provides assistance and supervision to the 95 offices of the U.S. Attorneys.

### **Legal Services**

The Executive Office provides legal opinions, interpretations, and advice to U.S. Attorneys on such matters as legislation, regulations, and departmental guidelines. It also drafts, reviews, and provides testimony on legislative proposals and regulations. It is responsible for maintaining liaison and guidance on intergovernmental legal affairs. During the year, activities of the section included participation in committees preparing revisions to the Federal Rules of Civil and Criminal Procedures; communication with and testimony before subcommittees of Congress on such varied topics as the Speedy Trial Act, pretrial diversion, the Freedom of Information Act, and the Federal Tort Claims Act; processing of and response to more than 1,000 Freedom of Information Act and Privacy Act requests, representing more than 11 million documents and extensive court findings; publication of the *United States Attorneys' Bulletin*, to assist U.S. Attorneys in keeping up with legal changes; a significant expansion of the *United States Attorneys' Manual*, the comprehensive collection of departmental policy and guidance, by inclusion of new sections on the Ethics in Government Act, criminal case procedures, and civil litigation; and participation in administrative and litigative actions involving employee rights, equal employment opportunity, adverse actions, and allegations of misconduct.

### **Field Activities**

The Field Activities Section conducts onsite reviews of U.S. Attorneys' Offices to help improve use of professional personnel, case management systems, coordination of the Attorney General's priority programs, and other management-related functions.

The section sponsors seminars relating to important civil litigation and other priority legal programs.

The section—which consists of a staff in Washington, is supplemented by volunteer services of senior Assistant U.S. Attorneys. The Washington staff coordinates the field visits of the Assistant U.S. Attorneys to the districts reviewed, processes reports of the reviewers, and takes whatever correc-

tive action is necessary. It is a cost-effective program and does not require a large permanent staff in Washington.

### **Administrative Services**

During the year, staffing level reduction of individual U.S. Attorney Offices was indicated by funding and employment restrictions. An analysis of workload requirements was conducted, and revisions in personnel allocations resulted in the reduction of 214 positions. Additional positions were assigned to five districts, while 57 districts had reductions in staff positions. No changes were made in the remaining 33 districts.

An Affirmative Action Program Unit was established within the Personnel Office. It directed and assisted in the appointment of approximately 250 special emphasis program managers, submitted affirmative action plans on the problems of handicapped applicants and employees, and conducted orientation seminars on sexual harassment and the plight of the handicapped.

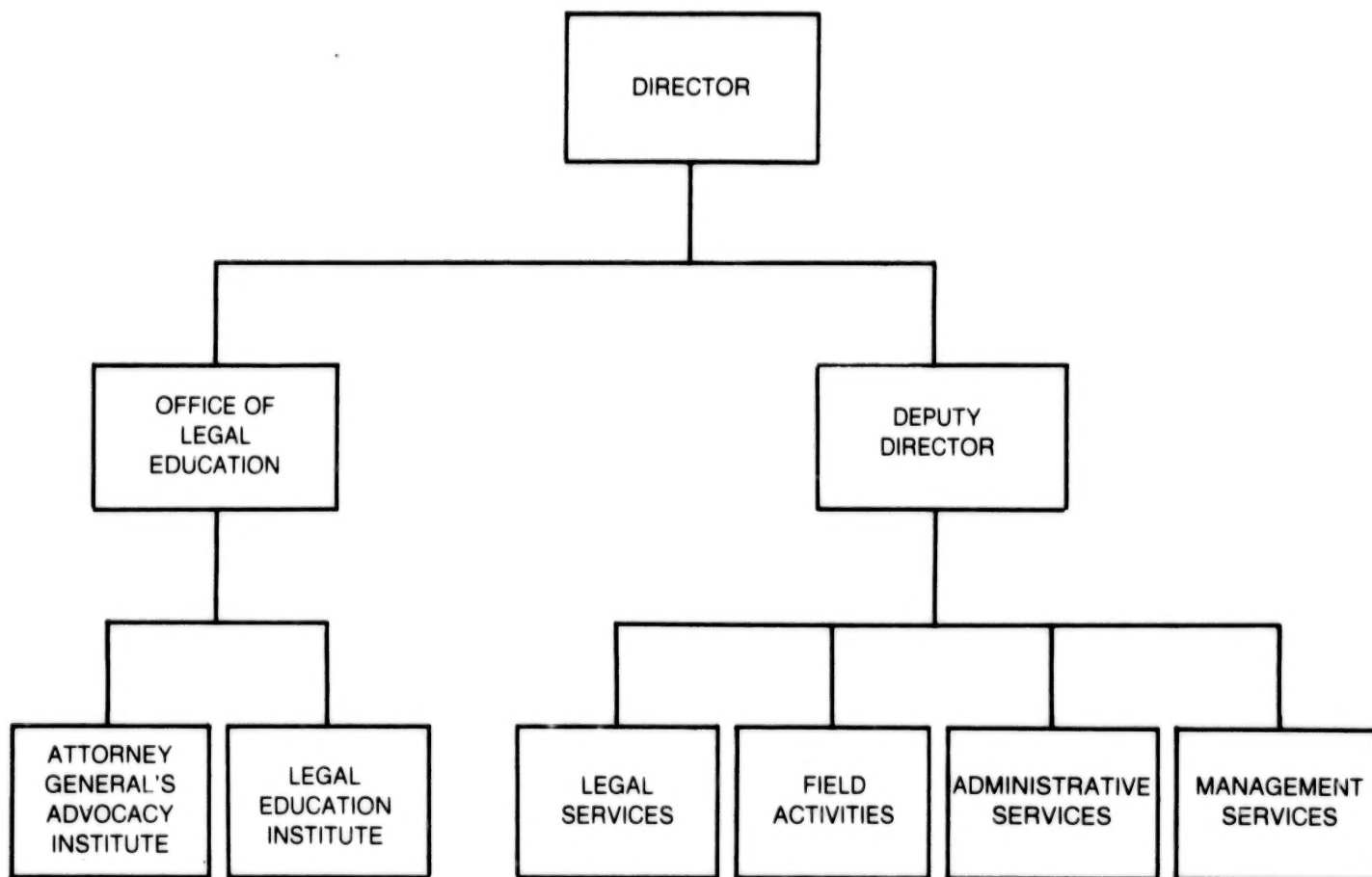
### **Management Support and Information Systems**

The Management Support and Information Systems staff assists U.S. Attorneys with management problems and the use of modern technology. An automated case-tracking system was installed in two large districts, southern California and New Jersey, to test the use of minicomputers and systems as management tools. The system is a modification of the Prosecutor's Management Information System (PROMIS), which was adapted for the U.S. Attorneys to track investigations, criminal prosecutions, civil cases, appeals, and collections activities. As a result of this successful test, the Department will install the system in all the other large offices during the next several years. A less complex version of the system will be installed in the smaller offices.

### **Office of Legal Education**

The Attorney General's Advocacy Institute (AGAI) and the Legal Education Institute (LEI) offered 55 courses and seminars to attorneys in the departments and agencies of the Executive Branch, including the Department of Justice. The office completed a review of all LEI courses, primarily for other departments and agencies; established interagency

## Executive Office for United States Attorneys



planning committees; and conducted a survey of all departments and agencies eligible for the training.

### Legal Education Institute

LEI worked closely with the Federal Legal Council to review planning. A major undertaking was the Advocacy Skills Course, modeled on the AGAI trial advocacy courses but with all new and special material for agency litigation and hearings.

### Attorney General's Advocacy Institute

The Criminal Task Force was reorganized and two new members added after a thorough search—one a senior litigation counsel and one a First Assistant U.S. Attorney. The basic course was completely reevaluated and a new case added to the materials, and work began on another new trial case. In the civil area, AGAI added a new case, substantially revised another, and reorganized the course into two and one-half weeks—instead of two weeks, plus one week scheduled six months later.

Fifteen specialized seminars were offered. AGAI worked with a new subcommittee of the Attorney General's Advisory Committee on the Federal Practice and Advanced Grand Jury Seminars. Work continued with the legal divisions on new priorities, such as the Narcotics Conspiracy Seminar, Civil Fraud Course, and a combined Aviation/Admiralty Seminar to reflect a reorganization of activity within the Civil Division and with the U.S. Attorneys' Offices. After a three-year interim, AGAI and the Tax Division offered a new Criminal Tax Institute.

### Attorney General's Advisory Committee of U.S. Attorneys

The Advisory Committee was established in 1973 and formalized in 1976 by order of the Attorney General. It makes recommendations on establishing and modifying policies and procedures of the Department; improving management, particularly with respect to the relationships between the Department and the U.S. Attorneys; cooperating with state attorneys general and other state and local officials to improve the



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quality of justice in the United States; promoting greater consistency in the application of legal standards throughout the nation and at the various levels of government; and aiding the Attorney General, the Deputy Attorney General, and the Associate Attorney General in formulating new programs.

The committee is made of up 15 representative U.S. Attorneys who serve at the pleasure of the Attorney General. Its standing subcommittees work to improve Department of Justice action in particular areas where a potential for improvement has been noted. The present standing subcommittees are Investigative Agencies, AGAI, and Legislation or Court Rules. Temporary subcommittees are established periodically for limited purposes such as management standards, office manuals, expedition of tax case review, declination guidelines, border problems, and Indian affairs.

The committee meets bimonthly and is available to the Attorney General, the Deputy Attorney General, the Associate Attorney General, and the Assistant Attorneys General in charge of various divisions of the Department. Matters of mutual concern, relating to the operations of U.S. Attorneys, are reviewed. Headquarters officials of all investigative agencies, including the Federal Bureau of Investigation and the Drug Enforcement Administration, are also invited to discuss areas of mutual concern with the committee.

## The U.S. Attorneys

The U.S. Attorney is the chief law enforcement representative of the Attorney General in each of 95 federal districts in the 50 States, Guam, Northern Mariana Islands, Puerto Rico, the Virgin Islands, and the Canal Zone. The U.S. Attorney enforces federal criminal law and handles most of the civil litigation in which the United States is involved.

U.S. Attorneys are appointed by the President, with the advice and consent of the Senate, for four-year terms, and serve at the pleasure of the President. Assistant U.S. Attorneys are recommended by the U.S. Attorneys and appointed by the Attorney General.

U.S. Attorneys carried out their responsibilities with the support of 1,978 Assistant U.S. Attorneys and 2,345 non-attorney personnel. Their offices ranged in strength from two Assistant U.S. Attorneys to 163 Assistants, with 38 having fewer than 10 Assistants. The budget for U.S. Attorneys' Offices for the year totaled more than \$176,859,000.

During the year, some 30,600 criminal referrals were opened in U.S. Attorneys' Offices, 15,493 grand jury proceedings were conducted, 22,181 criminal cases were filed, and 22,276 criminal cases were terminated. There were approximately 29,959 indicted defendants in cases that were terminated—4,646 were dismissed, 20,310 entered guilty pleas, and 5,003 were tried, of which 3,927 were found guilty after trial.

During this same period, approximately 70,175 civil cases were filed, 62,109 civil cases were terminated, and 102,826 civil cases were pending at the end of the year. This pending civil caseload represents a potential liability of over \$11 billion against the United States and potential recovery of approximately \$1.2 billion for the government. Ninety percent of the civil judgments received were determined in favor of the United States.

## White-Collar Crime

Economic crime continued as a major target of U.S. Attorneys. The president of a Los Angeles corporation was convicted of filing a false tax return by understating his company's ending inventory by approximately \$353,000, resulting in a loss of tax revenue of approximately \$250,000. This was one of the first instances of proof of false return statements in the form of undervalued inventory in a tax prosecution in the country.

Fred C. Barksdale, a Florida attorney who specialized in representing people charged with traffic offenses, was convicted of willfully subscribing to a false income tax return and obstructing a criminal investigation. The trial lasted eight weeks, during which the government called 335 witnesses. The jury also heard tape recordings of telephone conversations wherein the defendant instructed former clients to lie to the Internal Revenue Service about payments made to the defendant and to destroy their receipts. The defendant was sentenced to six years.

James B. Damon, a former Internal Revenue Service tax examiner, and his wife were sentenced to a total of 14 years plus a \$25,000 fine, and five years supervised probation, respectively, after their conviction of preparing false tax returns. The Damons, who operated a large-scale tax preparation business in Austin, Texas, enjoyed the reputation of obtaining large refunds for their clients. The scheme employed was by the use of a Schedule C, which falsely reflected that the taxpayer was self-employed and had a large business loss. Based upon the audits of approximately 1,300 returns which were seized under a search warrant, approximately \$4 million in taxes and penalties will be assessed.

Michele Sindona, the former major shareholder in the Franklin National Bank, was convicted of conspiracy, falsifying the records of the bank in 1974 to hide over \$7 million in operating losses, submitting a false financial statement to the Manufacturers Hanover Trust Company to influence the action of that bank on a \$35 million extension of credit, and defrauding purchases of stock in the Franklin New York Corporation. He was also convicted of perjury before the Securities and Exchange Commission. Sindona was sentenced to 25 years in prison and fined \$207,000.

An Eastern District of Michigan case involved embezzlement and conspiracy in the largest bank theft (\$421,000) in

Michigan history. The defendant was a bank vault teller who, with the aid of an accomplice, devised a scheme to fake a robbery to cover up the theft of the funds. Approximately \$375,000 was recovered by the government from a field where it had been buried.

A 10-month trial resulted in the conviction and sentencing of five defendants charged with the fraudulent sale of securities through agricultural cooperatives in Missouri, Oklahoma, and Arkansas. Sales of stock and securities through the largest agricultural cooperative, the Progressive Farmers Association, totaled over \$11 million prior to the bankruptcy of the cooperative. The principal defendant received sentences totaling 15 years in prison and a \$20,000 fine.

Nine defendants pled guilty to conspiracy and use of the mails and interstate wires to defraud investors who purchased oil futures contracts from Ramco Petroleum Corporation in Boston, which, in turn, acted as agents for Bartex Petroleum Corporation in New York, International Petroleum Exchange Corporation in New York, and Commercial Petrolera Internacional, S.A., a Panamanian corporation. Over 600 investors invested \$3 million in the scheme through Ramco and other agencies throughout the United States.

In Central California, after a 10-week trial, five defendants were convicted of conspiring to defraud investors in a scheme to obtain loans for the development of a "secret process" to extract gold and platinum group metals from alleged precious metal-bearing ore. Sentences of the defendants ranged up to seven years in prison. In what State officials referred to as the largest land fraud scheme in California history, three defendants were convicted in a scheme where Pre-Builder Land Corporation bilked investors of over \$5 million from 1965 through 1976. The defendants used several "shell" corporations to purchase and transfer parcels of land among themselves, often doubling the price before selling it to deceived customers.

A jury in Missouri found Robert M. Van Horn, a Kansas City lawyer, guilty of defrauding more than 200 investors in Mo-Am Loan & Investment Co., and 14 other firms he controlled, of approximately \$8 million. The government proved that Van Horn ran a pyramid scheme under the guise of legitimate loan and land-development businesses, as well as peripheral businesses including a proposed sound and light production, a scheme to market health insurance for pets, and a business to store recreational vehicles in underground caverns.

Clifford Miller and his wife were convicted of mail fraud, defrauding the government, and conspiracy in a scheme calling for Miller to fake his death by heart attack and his subsequent "burial" in Mexico in 1975, and for Mrs. Miller to file for and collect insurance and Social Security benefits for herself and her children. She received approximately \$19,000

from one insurance company in a lump sum and, up to the time of her arrest, had been the beneficiary of approximately \$14,000 in Social Security benefits.

Seven defendants were convicted on various charges in connection with "bait and switch" frauds in the sale of beef by Mighty Fine Meat Company. All pled guilty and received sentences ranging from six months in prison to probation, conditioned upon their staying out of the meat business. Bait and switch operations by confidence men in Wyoming, Colorado, Utah, and elsewhere continue to be a major problem of consumer fraud, and other similar operations are under investigation.

Eighteen defendants were prosecuted in a six-week trial on charges of racketeering, involving a pirate tape-manufacturing and distributing scheme conducted in 11 states and two countries and resulting in losses of approximately \$80 million per year to the recording industry. The investigation involved a 1½-year undercover operation (including operation of a pirate tape store front), a 30-day court-authorized wiretap, and the simultaneous execution of 12 search warrants in four states, uncovering pirate tape equipment and supplies of a value in excess of \$1 million.

In Los Angeles, Marubeni America Corporation and Hitachi Cable, Ltd., subsidiaries of two of Japan's largest multinational corporations, were sentenced to fines of \$206,000 and \$185,000, respectively, as a result of their convictions for having engaged in an eight-year scheme to bribe an official of the Anchorage Telephone Utility in order to obtain over \$8.8 million in telephone cable contracts from the municipality of Anchorage. Two coconspirators and a Marubeni executive received prison terms.

The U.S. Attorney, Southern District of West Virginia, has continued to have a significant impact on fraudulent coal tax shelter schemes. In one case, a prominent Tennessee attorney and a West Virginia coal operator were successfully prosecuted for their involvement in a \$16 million investment scheme. In a similar case, two Ohio coal operators were convicted for their involvement in the operation of fraudulent coal tax shelters. As a result of these four convictions, the United States stands to recover approximately \$11.4 million in lost tax revenues, plus interest from investors who took approximately \$23.2 million in tax reductions.

## **Public Official Corruption**

In February 1980, the Federal Bureau of Investigation concluded the ABSCAM undercover operation in which Federal Bureau of Investigation agents and an informant posed as employees of wealthy foreign businessmen seeking to buy political influence in the District of Columbia. The U.S. Attorney's Office successfully prosecuted Congressman John W. Jenrette of South Carolina, and Richard Kelly of Florida. Jenrette and businessman John R. Stowe accepted a \$50,000

payment from a Federal Bureau of Investigation agent in return for Jenrette's promise to introduce a private immigration bill in the House, and also solicited an additional \$125,000 to cause a similar bill to be introduced in the Senate. Kelly and two associates received \$25,000 in return for Kelly's promise to introduce a private immigration bill in the House.

L. Ray Blanton, the former governor of Tennessee, and two of his top aides, Clyde E. Hood, Jr., and James M. Allen, were convicted by a jury of charges arising from a scheme to award retail liquor licenses to their friends. The governor received a kickback of 20 percent of a retail liquor license awarded to one particular individual. This individual paid this debt by purchasing worthless oil stock from the governor just before he left office.

The first of a series of public corruption cases involving a Federal Bureau of Investigation undercover operation in Jacksonville, Florida, resulted in the conviction of Harold Haimowitz, a local "power-broker," politician, and attorney, and Charles Jones, the director of a division of the Public Health Department.

Victor Mena and Raoul Severo, officials of the Greater Los Angeles Community Action Agency (GLACAA), were each sentenced to five years in prison, \$10,000 fines, and 500 hours of community service work after their convictions of conspiracy, bribery, concealment of material facts, fraudulent statements to the Community Services Administration, and theft of Community Services Administration funds. The convictions arose from a \$10,000 kickback from a company which received a \$50,000 GLACAA contract, and 20 percent kickbacks to defendant of monies received by the codefendant's law firm for the performance of GLACAA's legal business.

John L. Czelusniak, former director of the Community Regional Opportunity Program in Hampden County, Massachusetts, was found guilty on charges of embezzling \$12,000 in antipoverty funds and taking \$1,600 in kickbacks from a Comprehensive Employment and Training Act (CETA) employee. Czelusniak received a sentence of one year imprisonment, and restitution in the amount of \$7,600 was required under the terms of probation. Former Boston School Committee member Gerald F. O'Leary; Richard J. Mulhern, an attorney with offices at Boston; and Robert Tierney, an employee of the Boston School Department, were convicted of conspiracy, attempted extortion, and interstate travel in aid of racketeering. O'Leary approached an employee of ARA Services, Inc., and, together with Tierney, demanded \$50,000 in return for a vote awarding ARA the \$40 million school bus contract. ARA representatives advised the U.S. Attorney's Office of the approach and thereafter cooperated with the Federal Bureau of Investigation, who investigated the allegation by means of video and audio recordings. O'Leary voted for the ARA contract on the same day that

Mulhern picked up the \$25,000 in cash. In later meetings, Mulhern and O'Leary demanded \$25,000 more in cash and \$600,000 to be paid in installments over the life of the school bus contract. Minutes after Mulhern and O'Leary picked up the second payment of \$25,000 in cash, they were arrested by the Federal Bureau of Investigation and the money was recovered.

After a three-year investigation by Postal Inspectors, the U.S. Attorney's Office, and the Elections Crimes Branch of Justice involving the abuse of absentee ballots in Luzerne County, Pennsylvania, the government convicted 11 defendants of various charges of mail fraud, conspiracy, and multiple voting, in an elaborate, well-organized voter fraud scheme.

In a retrial, a jury in Alexandria, Virginia, convicted Dr. Murdock Head, Director of Airlie Foundation and a Department Chairman at George Washington University, of conspiracy to bribe former Pennsylvania Congressman Daniel J. Flood and former Congressman Otto E. Passman of Louisiana, and of conspiring to evade taxes and file false tax returns.

A successful District of Columbia prosecution arose out of a scheme by Excavation Construction, Inc., to bribe Judge Robert Campbell of the District of Columbia's Superior Court. The scheme involved paying him over \$15,000 during a seven-year period in return for eliminating the fines which Excavation Construction, Inc. was liable from operating overweight vehicles in the District of Columbia. Judge Campbell received a sentence of four months to two years and Excavation Construction, Inc., a \$10,000 fine.

In Western Arkansas, continuing an earlier series of investigations, two more county judges were convicted of mail fraud in connection with kickbacks paid by corrupt vendors.

The prosecution of Alex Raineri, a sitting Wisconsin circuit judge who was involved in the running of a place of prostitution, resulted in a prison term of three years.

Carl R. Scacchetti, a Rochester, New York, judge, was sentenced to imprisonment for a year and a day after a jury found him guilty of committing extortion under color of official right; the judge was "fixing" city court cases in exchange for money and property.

In Western New York, William C. Mahoney, Chief of Detectives of the Monroe County Sheriff's Department, and Assistant District Attorney Patrick J. Brophy were convicted in the last of a series of cases that also resulted in the conviction of Detective Lieutenant John F. Kennerson, three Detective Deputy Sheriffs, and two other individuals. All of the prosecutions arose out of the use of false testimony and fabricated surveillance logs to effect a State court conviction of organized crime figures in a murder case. It is believed that the conviction of the Assistant District Attorney is the first instance of charges against a prosecutor for a civil rights violation arising out of his use of perjured testimony and his suppression of *Brady* material.



During the year, three individuals pled guilty to violations involving the sale of pardons and paroles in the State of Tennessee. The defendants, who included Thomas E. Sisk, former legal counsel of the Governor, State Trooper Charles F. Taylor, and William A. Thompson, former Democratic committeeman from Chattanooga, were charged with participating in the sale of Executive clemency through the Office of Legal Counsel. Two of the defendants were sentenced to five years in jail, and the State Trooper received a 2½-year jail sentence.

In the largest financial fraud investigation in the history of the Chicago Police Department, 15 individuals and four private vendors were convicted for participating in schemes to defraud the Chicago Police Department and the city through kickbacks and inflated billings exceeding \$1 million at the Chicago Police Department motor pool. The charges included extortion, mail fraud, conspiracy, racketeering and perjury. Among the defendants were the highest ranking civilian employee of the Chicago Police Department and eight other supervisors at the Department's Electronics and Motor Maintenance Division. Sentences imposed included prison terms of up to 20 years and fines totaling more than \$500,000. Thirteen persons have been convicted to date in one of the largest official corruption cases in the Northern District of Illinois as the result of a three-year investigation of the Cook County Board of (Tax) Appeals. Five others have been indicted, and one person was acquitted. The defendants were charged in connection with various schemes to obtain \$65 million in fraudulent property tax assessment reductions. Among the six defendants are six officials from the Board of Appeals, nine tax consultants and four lawyers. The total of fines imposed by the court exceeds \$200,000.

## Organized Crime

In New York City, Frank Tieri was convicted as the "boss" of the nation's largest organized crime family, and for conducting this "enterprise" through a pattern of racketeering activity from 1969 to 1977 which consisted of murder, loan-sharking, extortion, and bankruptcy fraud. The case marked the first time that anyone had been indicted and convicted under the Racketeer Influenced and Corrupt Organizations (RICO) statute for being an organized crime boss who participated in a pattern of racketeering activity. Tieri was sentenced to ten years in prison; he died while his convictions were being appealed.

In two separate trials in the Western District of Virginia, 12 individuals and three corporations were convicted on numerous charges involving the manufacture and distribution of illegal M-80 explosives. The cases involved operations of M-80 manufacturing plants in Lynchburg, from 1976 to 1978, and in Wise County, from 1972 to 1979. The conspiracies

involved a complex criminal venture which included organized crime figures in six states.

A Western Pennsylvania investigation into a series of drug-related contract murders resulted in three pleas to RICO/murder counts and the arrest of eight individuals. It was anticipated that a fourth RICO indictment would be returned during October 1981, concerning one of the contract killings by this same group of defendants. In the same district, John Scalzitta, a reputed high-level LCN associate, was convicted of cocaine distribution, in Western Pennsylvania, and sentenced to a 10-year prison term.

Carmine and Peter Romano were convicted of controlling New York's Fulton Fish Market through a pattern of racketeering activity. The two, both officials of Local 359 of the United Seafood Workers Union, were convicted of racketeering, conspiracy, receipt of illegal labor payments, misuse of welfare and pension trust funds, perjury, and obstruction of justice. Judge Lee P. Gagliardi ordered that Carmine Romano be immediately remanded to the custody of the Attorney General because he posed a threat to the community. The convictions were the result of an intensive two-year investigation of organized crime's influence in the Fulton Fish Market, which was conducted by the office of the Inspector General of the Department of Labor, the Organized Crime Control Bureau of the New York City Police Department, and the Internal Revenue Service. The Romanos received "protection" payments from fish wholesalers and operated Fulton Patrol Service, which collected over \$644,000 in protection money from Fulton Fish Market businesses; the defendants and their associates received money from Fulton Patrol although they performed no legitimate services. Carmine and Peter Romano also were convicted of collecting illegal labor payments of over \$66,000 from 46 different wholesale fish companies in return for "renting" the companies cardboard signs bearing the United Seafood Workers Union Seal. Eleven wholesale fish companies in the Fulton Fish Market pled guilty to violating the Taft-Hartley Act by making payments to officers and employees of the United Seafood Workers Union.

## Controlled Substances

The last of the defendants in Arizona's "Iranian Connection" cases was sentenced in Phoenix to 30 years and a \$50,000 fine, to run consecutive to a 30-year term imposed in Tucson. The defendant, who was a principal in an organization smuggling pure Southwest Asian heroin into the United States, was also found to be a Dangerous Special Drug Offender. Eight other persons were also convicted in the four related cases, which netted seizures of more than 12½ pounds of pure heroin.

In New York City, James Loftin was convicted of being the organizer of a continuing criminal enterprise and, along with

several other defendants, with participating in a massive 14-year narcotics racketeering conspiracy. This investigation, carried out by the Drug Enforcement Administration, the Internal Revenue Service, and the Office of the U.S. Attorney, culminated in the seizure of over 20 pounds of heroin. The jury also returned a special verdict forfeiting more than \$1 million worth of jewelry, furs, cars, and other property.

In Delaware, Otis L. West was convicted of possession with intent to distribute four pounds of heroin valued at over \$100,000. The investigation identified West as a major supplier of heroin in the Wilmington, Delaware, and Chester, Pennsylvania, areas.

Ten persons were convicted of conspiracy to distribute heroin and cocaine after federal agents broke up one of the largest drug rings then operating in Chicago. The two leaders of the \$1 million-a-year operation were also found guilty of running a continuing criminal enterprise. The defendants were sentenced to prison terms ranging from five to 30 years; fines against the group totaled nearly a quarter of a million dollars. In a separate civil action, the court ordered the forfeiture of 32 cars and two apartment buildings bought with the proceeds from the illicit drug trade.

Three members of a major cocaine importation ring pled guilty to various drug-related charges in Middle Tennessee. The importation scheme dated back to 1973, when a major cocaine importer enlisted the aid of two others to import cocaine from Colombia. During the conspiracy, approximately 100 kilograms of cocaine were imported into the United States. The Colombian source of the cocaine remains a fugitive.

A jury trial in Western New York resulted in the conviction of the supplier of seven other individuals who had been convicted of cocaine distribution in recent years in federal or state courts. Evidence included more than \$130,000 in cash and gold seized from a safe deposit box rented by the defendant; the defendant was sentenced to imprisonment for one year and a day, and the cash and gold are the subject of a forfeiture action.

Bill Thomas, a prominent TV newsman in the St. Louis area, was indicted and convicted of possession with intent to distribute cocaine and conspiracy; he was sentenced to seven years' imprisonment.

Isaac Kattan-Kassin, a Colombian national, was convicted on drug charges after Drug Enforcement Administration and Internal Revenue Service agents observed Kattan directing the transfer of cocaine at a busy intersection in downtown Miami. The case is significant, not only for the amount of cocaine involved but also as to the history of the defendant and the assets seized as a result of his conviction. The investigation commenced with information that Kattan and associates had laundered approximately \$60 million in cash in a Miami stock brokerage firm in approximately four months.

Kattan was among the top money launderers for drug operations in the United States; his operations were in excess of \$100 million in cash in 1980 alone. Agents of Operation Greenback, in which the U.S. Attorneys worked closely with the Criminal Division, included Drug Enforcement Administration agents, Internal Revenue Service agents, and Customs Service agents, who daily observed suitcases full of cash being deposited into Miami banks and were thus able to identify a number of bank accounts and assets of the defendant which were seized as a result of his conviction. To date, a little over \$3 million has been seized as a result of Kattan's conviction. A number of Swiss bank accounts have been blocked and negotiations with the Swiss Government are progressing for forfeiture of that money to the Swiss.

An individual was apprehended after four years as a fugitive, living in San Jose, California, under an alias, and was brought back to the District of Colorado where he was convicted on charges of heroin distribution. The defendant, believed to be the largest source of heroin in the Rocky Mountain area, was sentenced to the maximum imprisonment of 15 years and a maximum fine of \$25,000. He immediately posted a \$250,000 bond and, while out on bond, was arrested again for heroin trafficking.

In Middle Florida, Edward Ward and eight others pled guilty to marijuana smuggling over a three-year period. Ward operated a major smuggling ring in Northeast Florida and used aircraft to bring approximately 1,400 pounds per trip from the vicinity of El Banco, Colombia, to the area; Norman's Bay, in the Bahamas, was used as headquarters and as a refueling and emergency landing area by the group. Ward and six other defendants were found by the Drug Enforcement Administration in Haiti and involuntarily returned to the United States. Under the plea agreements, Ward and Charles Gregory Von Eberstein, another major defendant, could receive 20 years in prison and are forfeiting to the United States money and property totaling approximately \$1 million.

The successful prosecution of a Florida smuggling ring involved the seizure of eighty tons of Colombian marijuana near Morgan City, Louisiana. The legality of a warrantless boarding and search of tugboat and barge by the U.S. Customs Service was upheld by the district court as justified by 1) existence of articulable facts warranting reasonable relief of the legal activity and 2) extended border search.

In Southern Illinois, 33 members of an international smuggling ring known as "The Company" were convicted on various federal charges, and sentences ranged from two years to 210 years. "The Company" was responsible for the importation and distribution of over 300,000 pounds of marijuana during 1976-1980, grossing revenues of about \$55 million. Approximately \$3 million in assets were seized by the government.

For the past eight years, members of the Zion Coptic Church, a group which uses marijuana as a religious sacra-

ment, have been smuggling marijuana into the United States from Jamaica and Colombia. The government is aware of over 200 tons of marijuana being imported, and expenditures in excess of \$7½ million for property, seagoing vessels, and motor vehicles which were used in the Coptic's drug operations. The operations were conducted through the use of phoney corporations and fictitious names, under the cover of the "Church." In 1981, 13 members of the church went to trial on various marijuana charges. During the course of the ten-week trial, three defendants were severed for the later trial (one because of a contract to kill a witness), and one defendant received a directed verdict by the court; the remaining nine defendants were convicted on all counts.

## Other Major Criminal Cases

As a result of consolidation of the Cuban refugee relocation camps at Fort Chaffee, Arkansas, 20 additional felony indictments were returned, ranging from assaults to murder.

The U.S. Attorney, Central District of Illinois, successfully prosecuted 13 persons involved in a large nationwide alien smuggling operation. The operation, one of the most sophisticated smuggling schemes ever uncovered by the Immigration and Naturalization Service, recruited illegal Mexican and Guatemalan aliens to come to the United States, crossed them illegally into the United States from Mexico, and then transported them to employers in Texas, Illinois, Florida, New Jersey, Oklahoma, and Michigan. It is estimated that the operation transported approximately 25,000 illegal aliens during its 10-year existence and made over \$5 million profit. The 13 persons were convicted of conspiracy, transportation of illegal aliens, perjury, false tax returns, and other charges. Sentences ranged up to 10 years' imprisonment.

Two brothers, prominent Douglas, Arizona, ranchers, were indicted in 1979 for their role in a 1976 incident in which three undocumented aliens were beaten, tortured, and robbed. Defendants had previously been acquitted in State court, and the first federal trial resulted in mistrial after a hung jury. Because some evidence as to each defendant could not be admitted as to the other, two separate juries were empaneled for the retrial. After 25 trials days, Patrick Hanigan was convicted while Thomas Hanigan was acquitted. Patrick was sentenced to 3 years.

In Los Angeles, seven defendants received sentences of up to 8 years in prison following their conviction of various counts of conspiracy, attempting to obstruct commerce by extortion, damaging property by means of explosives, and engaging in a pattern of racketeering, over a seven-year period. The principal defendant was also ordered to forfeit to the United States his 95 percent ownership in a corporation. The convictions arose from a scheme to threaten the company's competitors, and to burn properties belonging to or

operated by these competitors. A total of eight fires, one of them causing over \$1 million in damage, were generated pursuant to the conspiracy. One defendant was sentenced to ten years for his conviction on charges of mail fraud and arson homicide, all arising from a fire which he caused and which resulted in the death of Los Angeles fire fighter. In a separate case, two defendants were also each sentenced to ten years in prison for the insurance fraud arson of their restaurant which resulted in the death of another fireman. These cases were products of investigations by the Los Angeles Arson Task Force, composed of agents of the Bureau of Alcohol, Tobacco and Firearms (BAT&F) and arson investigators of the Los Angeles City Fire Department.

The founder and Imperial Wizard of The Adamic Knights of the Ku Klux Klan was found guilty of violations of the Gun Control Act and the Omnibus Safe Streets and Crime Control Act after an extensive investigation by the BAT&F into the activities of the Klan in Delaware, Maryland, and the New England States. His codefendant, the Grand Titan of the Delaware Adamic Knights, pled guilty to the unlawful possession of firearms.

In Des Moines, Iowa, Douglas Bruce Fenimore pled guilty to charges of armed bank robbery of the First National Bank of Arizona. Fenimore, and two others who remain fugitives, stole \$3,318,000, making this the largest bank robbery in U.S. history. The manager, assistant manager, and janitor of the bank were held at gunpoint during the robbery. Fenimore also pled guilty in Iowa to the robberies of jewelry stores in California, and Arizona.

From the early 1970's, a group referred to as the Chattanooga-Soddy Daisy gang, perpetrated 25 bank robberies in Tennessee, Georgia, and North Carolina. Each robbery was similar and clearly indicated a very professional gang at work. Diligent efforts of Federal Bureau of Investigation agents in the three-state area led to the indictment and successful prosecution of the gang for a 1979 North Carolina bank robbery. Sentences ranged from 16-20 years, and each defendant was fined \$10,000.

Two reputed leaders of the FALN, a terrorist group seeking independence for Puerto Rico, were found guilty along with nine others on charges of seditious conspiracy, armed robbery, interstate transportation of stolen motor vehicles, and illegal possession of weapons. The charges stemmed from bombings in the Chicago area, including government buildings, banks, stores and private office buildings. The defendants were sentenced to prison terms ranging from 35 to 90 years.

Five persons were convicted of violating federal racketeering, explosives and civil rights murder statutes while carrying out Croatian terrorist activities. Evidence included a time bomb, 22 pounds of high explosives, bomb paraphernalia, several weapons including rifles with telescopic scopes, and a vast array of ammunition. Four of the defendants, leaders of



the Croatian terrorist movement in New York City, received sentences of 20 to 35 years' imprisonment.

Eleven members of the hierarchy of the Church of Scientology, including the wife of Scientology founder L. Ron Hubbard, were found guilty for their roles in conspiracies to burglarize various government offices, stealing sensitive documents. The principal defendants were sentenced to five years' incarceration. Two other defendants, who were high officials in the Church's worldwide office in England, were extradited and, following a lengthy jury trial, convicted of burglary and sentenced to six years' imprisonment.

Kenneth F. Guarino, a reputed "kingpin" in the wholesale distribution of pornography, was convicted of the interstate transportation of obscene materials. Also convicted were three corporations run by Guarino: Imperial Distributors, Gemini Enterprises, and Little Book Shops. Evidence showed Guarino to be a major distributor of obscene books, films and other items throughout New England, New York, and Eastern Canada, including numerous "adult book" stores in the "Combat Zone" of Boston, as well as the director of a multimillion-dollar-a-year distribution business from a warehouse in Providence, Rhode Island. Guarino was sentenced to 2 years' imprisonment and a \$15,000 fine, and the three corporations were fined \$15,000 each.

In the first litigation of the recently-enacted Federal Sexual Exploitation of Children Act, a defendant was convicted in Los Angeles of mailing obscene matter and using the mails to sell photographs depicting minors engaged in sexually explicit conduct.

The president, vice president for operations, assistant vice president, and labor-management consultant of the T. M. Coal Co. were convicted in the Western District of Virginia of conspiracy and dynamiting a strip mining auger machine during the 1977-78 United Mine Workers' strike. The president of the company was also convicted of wire fraud in filing a false insurance claim for the machinery, which was insured for \$110,000. The crime, committed in December of 1977 at the beginning of the long and bitter United Mine Workers' strike, contributed to heightened tensions during the strike, and was motivated by a desire to attract public attention to the company's plight by blaming the striking miners and to obtain an injunction against them. The defendants received substantial fines and probation.

Myles E. Billups, Sr., International Vice President of the International Longshoremen's Association (ILA), President of the ILA's Hampton Roads District Council, and President of Local 1970 of the ILA in Norfolk, Virginia, was convicted of attempted extortion under the Hobbs Act, interstate travel in aid of racketeering, and two Taft-Hartley Act violations. Billups' conviction stemmed from a 3½-year investigation code-named UNIRAC, of union racketeering activities on east coast waterfronts.

## Major Civil

In the first swine flu case to be tried in Ohio, and one of the first tried on all liability issues in the country, the court entered a judgment in favor of the United States. The plaintiff sued the government for \$750,000 alleging that, as a result of a swine flu injection, she contracted a neurological disorder known as Guillain-Barre Syndrome. The court held that she failed to prove her neurological disorder resulted from Guillain-Barre Syndrome and that, even if it did, she failed to establish that her disorder was caused by the swine flu injection.

In Western Louisiana, as a result of a well explosion fire at the West Hackberry Site of the Department of Energy's Strategic Petroleum Reserve, substantial property damage claims were filed, as well as personal injury and wrongful death actions. The district court held that the Department of Energy was a statutory employer as recognized by the Louisiana Workmen's Compensation Statute and therefore an action in tort was barred.

Federal employees and seven federal unions brought suit requesting that the government be permanently enjoined from collecting parking fees from federal employees pursuant to a General Services Administration regulation. This regulation, issued in 1979, affected approximately 125,000 parking spaces nationwide and resulted in an annual fee collection of approximately \$20 million. The D.C. District Court granted a permanent injunction holding that the President's motive in instituting a paid parking plan was to conserve energy and that the Executive Branch had not complied with requirements of the Energy Policy and Conservation Act.

Consolidated cases filed on April 3, 1981, by local governments, nonprofit corporations, and individuals representing 300,000 participants in the CETA jobs program challenged the President's deferral and proposed rescission of over \$800 million in CETA funds pursuant to the Impoundment Control Act. After denial of plaintiff's motion for a Temporary Restraining Order the district court entered judgment for defendant. The court of appeals, following expedited briefing and argument, upheld the President's actions as in complete accord with the Impoundment Control Act. This was the first court of appeals decision ever clearly to sustain a Presidential impoundment and the first decision interpreting the Impoundment Control Act to give the President impoundment authority. The favorable outcome of this case established important precedent because the CETA impoundments were typical of hundreds of impoundments proposed or taken by the President's Economic Recovery Program and anticipated in the next budget year.

In addition to defending the interests of the government, U.S. Attorneys initiated a wide range of civil actions. The U.S. Attorney's Office in Eastern Virginia was successful in obtaining injunctions against all Professional Association

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of Air Traffic Controllers (PATCO) locals in Virginia and in obtaining substantial contempt penalties from these locals and their presidents. That office was commended by the Attorney General for its prompt and decisive action against the striking air traffic controllers and their leadership.

Two Congressional hearings focused on the unlawful taking of approximately 600,000 tons of government coal in Alabama. The first coal trespass case to be litigated in Northern Alabama was successfully concluded by the entry of a consent decree in the Invesco case, wherein judgment was entered in the amount of \$1,100,000. During the course of the Invesco litigation, the court rendered a decision that Alabama law governs the measure of damages. As a result, the government can recover substantially higher damages than it could under federal regulations. This decision is expected to have a significant effect on pending and future coal trespass cases in Alabama.

In the Eastern District of Oklahoma, the United States brought suit for approximately \$350,000 against a bank for failing to apply proper banking procedures to the handling of an SBA-guaranteed loan upon which SBA had not collected the accounts receivable as efficiently as might have been expected, the bank had in fact assigned accounts which it anticipated would not pay to the SBA-guaranteed loan, while it assigned "sure-payers" to its loan. The bank also assigned poor accounts more than once to the SBA-guaranteed loan, thereby leaving it undersecured. Additionally, the bank asked SBA to renew the loan after the bank possessed the knowledge that the company was in the process of going under. Based upon the evidence, the bank made settlement of the case.

A denaturalization action was brought in the Northern District of Ohio against a former Ukrainian citizen accused of illegally entering the United States by failing to disclose his background as a guard at the Treblinka Extermination Camps in Poland during World War II. The defendant had been living in a suburb of Cleveland under his own name. After a six-week trial, the court rendered judgment for the United States. This was the second Nazi war crime case to go to trial in the United States.

One of the most significant cases during the year was the New York City Census case challenging on constitutional grounds the manner in which the population count of New York City and surrounding counties was conducted. The plaintiffs' goal was to obtain a reformulation of the basis for Congressional and local legislative apportionment and distribution of federal funds for the 1980's. The case resulted in an expedited trial during the course of which the district court assessed sanctions against the government for refusing to turn over to plaintiffs address registers. Although early in the litigation the district court issued, and the Second Circuit affirmed, a preliminary injunction requiring the Census Bureau to undertake special counting procedures in New

York, following a final decision on the merits, the Second Circuit reversed the district court and remanded the action for a new trial, primarily on the basis of the government's argument that the Census Bureau's refusal to disclose its address registers was proper and that, in any event, the preclusion order entered at trial was an abuse of discretion.

The State of South Carolina sought a declaratory judgment claiming that women were not qualified to serve as patrolmen on the State Highway Patrol. A counterclaim was filed alleging that the State engaged in a pattern and practice of discrimination against women, contrary to the provisions of the Civil Rights Act. After several years of protracted litigation, a consent decree was obtained which provided that the Highway Patrol would hereafter hire women as "patrolpersons," and the State has set a goal of hiring at least twenty percent women in the future.

## Environmental

In the Western District of Virginia, one of the nation's largest coal producers pled guilty to defrauding the Respirable Dust Program, which is designed to protect miners from black lung disease and to prevent mine explosions. The company admitted to willfully failing to take accurate samples of the mine atmosphere on a repeated and continuous basis over more than a seven-month period, and to willfully violating other mandatory safety standards. The \$100,000 fine is believed to be the largest ever assessed against any coal mining company for violating the Federal Mine Safety and Health Act.

A major settlement was reached in the Northern District of Alabama between the United States and Alabama By-Products Corporation, a coke industry, for previous violations of the Clean Air Act. In consenting to judgment, the defendant corporation agreed to major overhaul and installation of pollution abatement devices in excess of \$10 million.

The United States won a substantial victory against Mountain States Legal Foundation and the Rock Springs Grazing Association, who had brought suit for the immediate removal of wild horses within the Rock Springs grazing district pursuant to the Wild Horse and Burro Act of 1971. The suit demanded that the court hold the former Bureau of Land Mines Director personally liable for the losses of the ranchers because of the forage which the wild horses consumed. The court found that government employees, even policymaking officials, were immune from liability and ordered the Bureau of Land Mines to remove the horses in increments over the next two years.

The Seventh Circuit reversed a preliminary injunction that enjoined the United States from enforcing, during the pendency of a quiet title action, several criminal statutes intended to protect national forests and to ensure compliance with Forest Service regulations.

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The Ninth Circuit substantially upheld the trial court determination that the Columbia Basin Land Protection Association, an organization of landowners, could not prevent the location of a Bonneville Power Administration high voltage transmission line on their lands, on the ground the association challenged the Environmental Impact Statement. The court held the Statement adequate and that the location of the line was within agency discretion. In Oregon, six environmental groups obtained a broad injunction against the Bonneville Power Administration, a federal power-marketing

agency, premised upon Bonneville's proposal for a program of power resource development activities that the region's utilities and Bonneville were to undertake. The proposed program failed to be implemented, partly because of the injunction, and Congress responded to the impasse by enacting a new, distinct program for Bonneville and the region. Although the new law did not provide a specific exemption from the National Environmental Policy Act, the court held that the old proposal for a program was dead and that the injunction, as an obstacle to Bonneville's implementation of the new law, must be vacated.



# Executive Office for United States Trustees

**Quinlan J. Shea, Jr.**  
**Director and Counsel**

The Bankruptcy Reform Act of 1978 (P.L. 95-598, 92 Stat. 2549), which became effective on October 1, 1979, was the first substantial revision of bankruptcy law since 1938—and enacted Title 11 of the U.S. Code and is called the Bankruptcy Code. One goal of the Code is to remove the bankruptcy judge from the administration of bankruptcy cases, leaving the judge with a purely adjudicative role.

In an effort to determine the best method of achieving this objective, Congress created the U.S. Trustee program on an experimental basis to supervise the administration of bankruptcy cases in 18 specific federal judicial districts. This program is scheduled to operate until April 1984. At that time, it will terminate unless Congress decides to continue the pilot program, modify it, or expand it to all judicial districts. The Department of Justice has established 10 main field offices and three suboffices to cover these 18 districts, as well as an Executive Office for U.S. Trustees in Washington, D.C. Each field office is headed by a U.S. Trustee appointed by the Attorney General.

There are 149 full-time positions in the U.S. Trustee Offices.

The pilot districts were selected because of their geographic, demographic, and economic diversity—plus the fact that 28 percent of the bankruptcy cases were filed in 1978 arose in these districts.

The Executive Office, with an 18-member staff, provides policy direction, coordination, counsel, and administrative support services. The Legal Services staff provides legal advice and coordinates and develops litigation policy. The Management and Administration staff provides support in budget, automated information systems, and program evaluation.

## Duties and Responsibilities of the U.S. Trustees

U.S. Trustees are responsible for the supervision of three different kinds of bankruptcy cases under the Bankruptcy Code:

*Chapter 7. "Liquidation."* In this kind of case, assets of a debtor are liquidated, beyond certain statutory exemptions. Absent unusual circumstances, the debtor then obtains a discharge from debt and a financial "fresh start." The U.S. Trustee appoints interim trustees and successor trustees; serves as trustee where no private trustee is available to serve; maintains and supervises a panel of private trustees eligible for appointment; may examine debtors and may object to discharge; may be heard on awards of compensation to attorneys, auctioneers, appraisers and accountants to ensure that compensation is fair; and reviews

final reports of trustees on the estates they have administered.

*Chapter 11. "Reorganization."* This type of case combines features of the former Chapters X, XI and XIII, and allows for the total restructuring of both the debt and equity of affected debtors. Chapter 11 provides an opportunity for the debtor to operate while attempting to develop a reorganization plan with affected creditors; if the creditors accept this plan (and the court confirms it), the chapter provides a framework for the plan to be implemented. Although a debtor may be liquidated under a plan in Chapter 11, the principal purpose of the chapter is rehabilitation. The U.S. Trustee appoints committees of creditors and, where necessary, of equity security holders; may move for and may be directed to appoint a trustee or examiner; schedules and presides at meetings where creditors examine the debtor; supervises the administration of cases and trustees; monitors awards of compensation, as in Chapter 7 cases; and may examine the debtor and comment upon proposed disclosure statements.

*Chapter 13. "Adjustment of Debts of an Individual with Regular Income."* In this kind of case, an individual with a regular source of income, such as wages or commissions, or a small business in which the debtor is self-employed, can discharge debts by arranging for payments over a period of time (usually three years but not more than five). The consent of unsecured creditors is not required. Chapter 13 is available only to individuals with unsecured indebtedness of less than \$100,000 and secured indebtedness of less than \$350,000. It replaces the former Chapter XIII, which was limited to wage earners. The U.S. Trustee appoints a standing trustee or serves as trustee, and supervises the administration of cases and the work of the standing trustee.

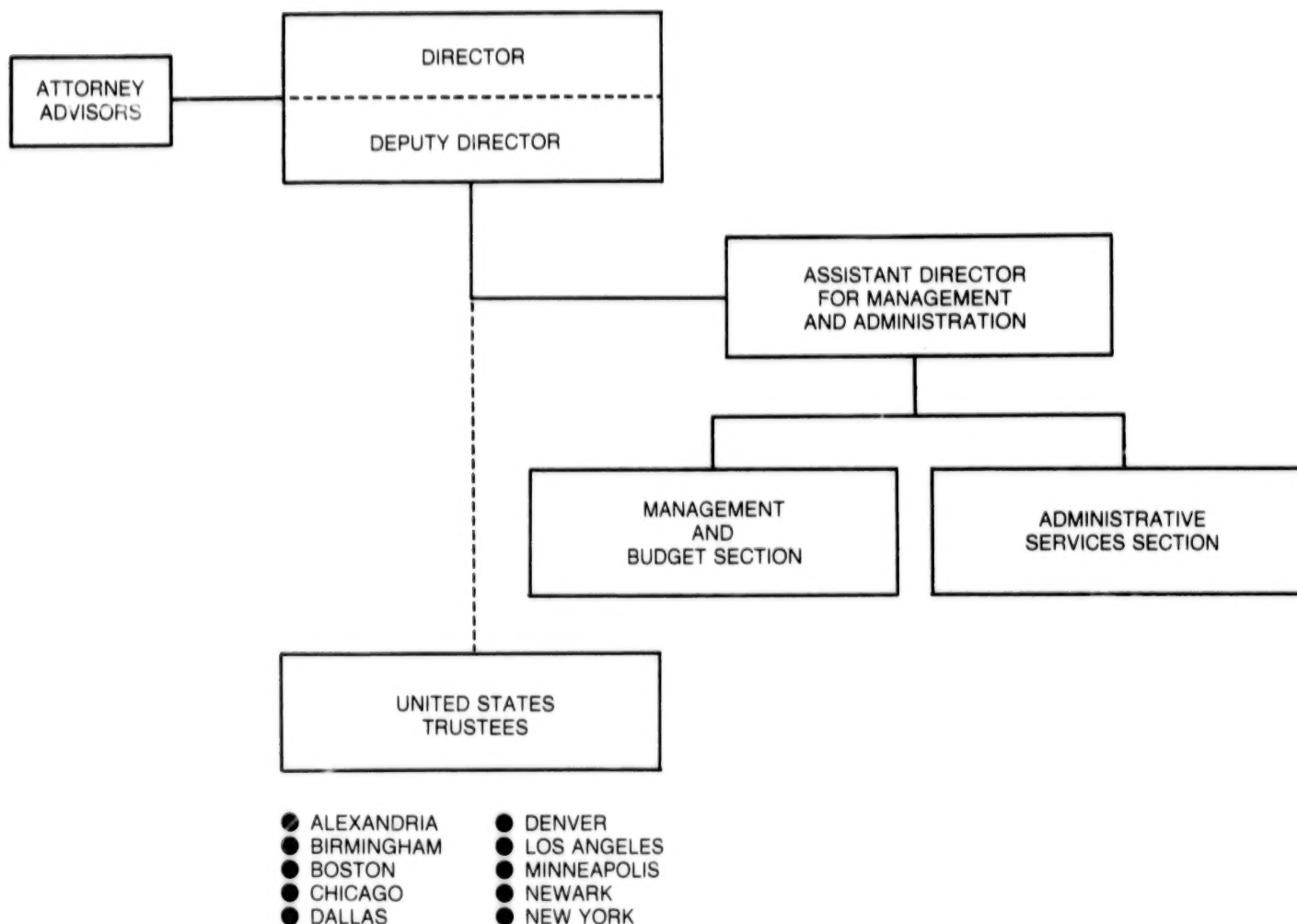
In the pilot districts, the U.S. Trustee is responsible for fair and efficient bankruptcy administration which directly affects not only the amount of recovery for creditors, but equitable treatment for the debtor as well.

## Significant Activities in Fiscal 1981

The caseload in the pilot districts increased significantly in fiscal 1981, in conjunction with large increases in consumer and business bankruptcy filings throughout the nation. There were over 95,000 new filings in U.S. Trustee districts compared to slightly more than 78,000 in fiscal 1980—an increase of over 20 percent. Chapter 11 cases rose by nearly 40 percent.

The U.S. Trustees responded to the substantial increase in workload in a number of ways. Supplemental funding was obtained for the program in July 1981. The U.S. Trustee Offices

## Executive Office for United States Trustees



solidified their working relationships with counterpart bankruptcy court clerks' offices in an effort to minimize duplication and speed case processing. More efficient recordkeeping systems were devised, filing systems were revamped, and a concerted effort made to ship the files on closed cases to Federal Record Centers to make additional office space available.

Trustees moved to convert to liquidation or dismiss those business cases which were languishing with no prospect of rehabilitation, or where the bankruptcy process was being used for improper purposes. Chapter 7 panel trustees were closely supervised to ensure that final reports on estate administration activities were submitted in a timely manner.

Despite the heavy volume of new filings, the U.S. Trustees continued their active role in policing cases. They closely monitored such aspects as appointments, hiring of attorneys and experts, fees, expenses, and day-to-day operations of reorganizing businesses. The offices also gave greater emphasis to eliminating dishonesty. During the year, a federal grand jury indicted a bank-

ruptcy attorney on 11 counts of false certifications to the bankruptcy court. An embezzlement investigation was started based on preliminary work by a U.S. Trustee Office. Preliminary inquiries along similar lines were underway in other districts.

The Executive Office undertook several initiatives to improve overall program management. The design of an automated management information system to assist the Trustees in supervising the administration of cases was completed, and it is scheduled to become operational in fiscal 1982. Work began on an operations manual for the Trustee program covering goals, policies, and procedures. Interim guidelines, written or being drafted, deal with such topics as cooperating with the Internal Revenue Service regarding the collection of taxes; the expenses of creditors' committees as expenses of bankruptcy administration; and the legality of certain kinds of investments effected by panel trustees who are investing debtors' money. Guidelines to be followed by the U.S. Trustees in overseeing the Chapter 13 standing trustees are also being prepared and a nationally recognized accounting firm has

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been selected to audit the standing trustees for fiscal 1980 and 1981.

A cooperative relationship with other components of the Department of Justice has been enhanced. This includes work with Assistant U.S. Attorneys who handle bankruptcy cases and the Commercial Litigation Branch of the Civil Division, which has experienced an increase in cases involving the Bankruptcy Code.

In one significant case during the year, a U.S. Trustee appointed the trustee in the first railroad reorganization case to arise under the Bankruptcy Code, and assumed oversight responsibili-

ty for the actions of the trustee in the performance of his statutory duties.

Planning for the Congressionally mandated evaluation of the pilot program was completed, a request for proposals was issued, and the U.S. Trustee Program will be formally evaluated during fiscal 1982. The evaluation report and the Attorney General's recommendations on the program's future are to be sent to Congress during fiscal 1983. The final decision of Congress on how to structure the system of bankruptcy administration and adjudication must be made before March 31, 1984.



# Bureau of Prisons

**Norman A. Carlson**  
**Director**

The Federal Bureau of Prisons, responsible for carrying out the judgments of the federal courts, provides offenders confined in its 42 facilities with opportunities for self-improvement through education, vocational training, counseling, and a variety of other programs. Highlights for fiscal 1981 include:

- After three years of decline, the inmate population increased and many Bureau facilities became overcrowded due to more commitments by the courts, an influx of aliens, and an overflow from state and local institutions.
- The National Corrections Academy of the National Institute of Corrections officially opened at Boulder, Colorado, and the new Bureau of Prisons Training Academy for staff opened at the Federal Law Enforcement Training Center at Glynco, Georgia.
- A clearinghouse was established to help states and localities obtain surplus or excess federal property for correctional use.
- The closing was announced of all Federal Community Treatment Centers which house offenders for the last few weeks of their sentences.
- The former U.S. Penitentiary at McNeil Island was turned over to the State of Washington for correctional use.
- Entry of information about all federal prisoners onto SEN-TRY, the Bureau's automated information system, was completed in August.

## New Training Facilities

The National Corrections Academy opened at the end of the year. Fifty-seven training programs for state and local corrections staff were scheduled through the end of 1982. Housed at the College Inn Conference Center, a facility owned and operated by the University of Colorado, the Academy is modeled on the FBI National Academy for law enforcement personnel.

The Academy was created in response to Chief Justice Burger's call for a centralized facility for training state and local correctional personnel. The Task Force on Violent Crime created by Attorney General William French Smith also endorsed the Academy and recommended that sufficient funds be made available to train state and local corrections practitioners in those areas that would increase their ability to deal with increased numbers of violent offenders.

The Bureau also opened its new Staff Training Academy, which will provide basic training for Bureau personnel and extend training opportunities to state and local correctional person-

nel. The Academy replaces the Bureau's Staff Training Center at Atlanta. The Bureau also operates a Management and Specialty Training Center at Denver, replacing one at Dallas which closed in July, and a Food Service Training Center at Oxford, Wisconsin.

The Bureau also took other action to carry out a Task Force recommendation that it share training resources with state and local correctional personnel. By year's end, a dozen Bureau institutions had opened their training programs to state and local agencies and all will do so during fiscal 1982.

## Clearinghouse

In August 1981, the Bureau established a clearinghouse to help states and localities acquire surplus and excess federal property for correctional use. The clearinghouse provides a list of available federal property and attempts to resolve difficulties that state and local authorities might encounter in acquiring it.

The Attorney General's Task Force on Violent Crime recommended that the Department of Justice work with federal authorities to make available to the states abandoned military bases for use as correctional facilities on an interim basis. The Task Force also recommended that the Attorney General assist states in obtaining federal property as possible sites for new correctional facilities. The Attorney General assigned responsibility for carrying out these recommendations to the Bureau.

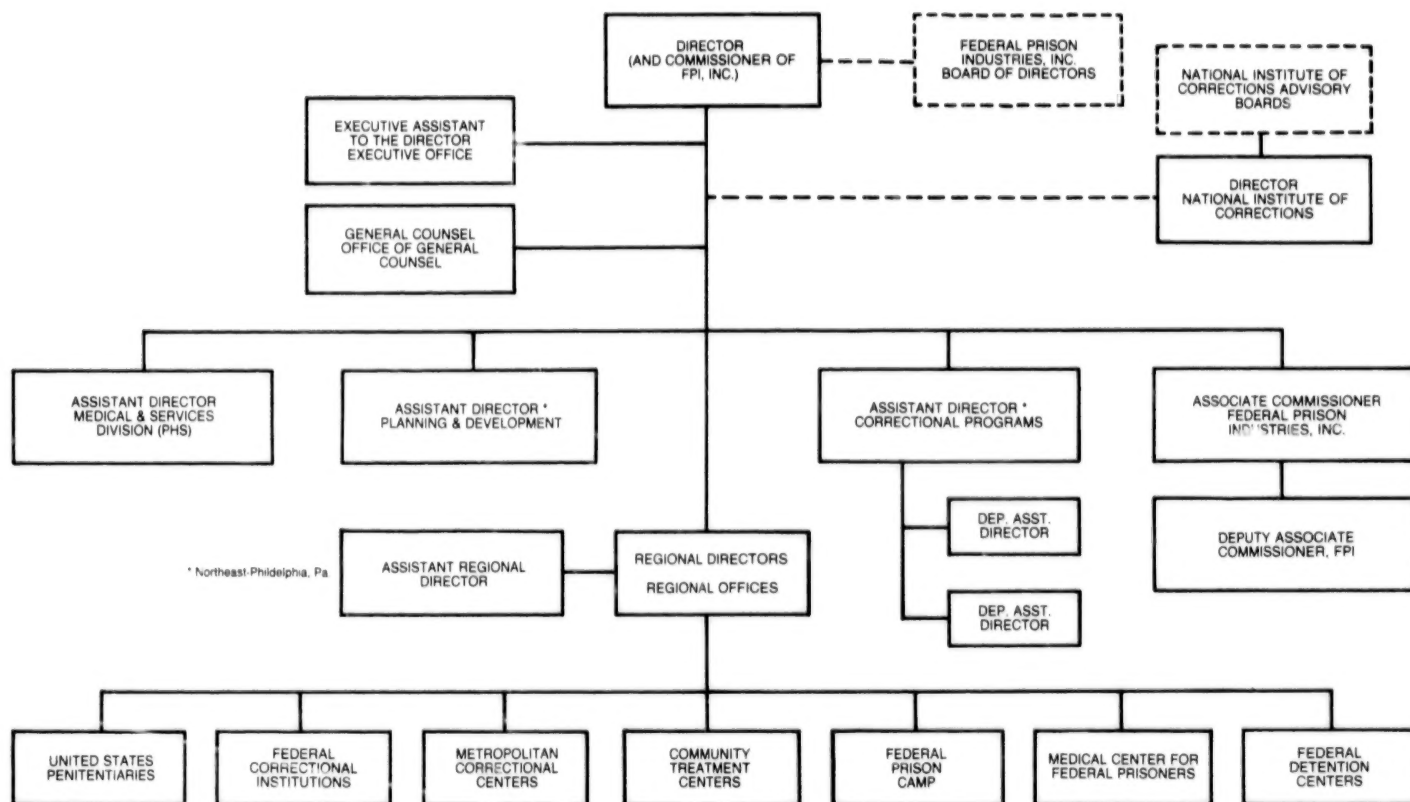
## Inmate Population

After a steady decline since 1977, the inmate population in federal institutions increased sharply during 1981. At the end of the year, there were 26,195 inmates, or 11 percent above design capacity—compared to 24,268 at the close of fiscal 1980.

More commitments by the federal courts and an influx of Cuban and Haitian aliens accounted for the increase, along with offenders from overcrowded local jails and acceptance of inmates from several state institutions to help them meet court orders to relieve overcrowding. By the end of the year, the Bureau had 2,300 Haitians and Cubans and about 800 state offenders.

In 1981, the Bureau transferred its oldest institution, the 116-year-old U.S. Penitentiary at McNeil Island, to the State of Washington, which is now using it as a correctional facility. In 1981, the Bureau completed construction of the medium-security Federal Correctional Institution at Otisville, New York, and satellite camps at the institutions at Texarkana, Texas, and El Reno, Oklahoma.

## Federal Prison System



## Community Programs

During fiscal 1981, approximately 68 percent of offenders released to the community went through federal and contract community treatment centers. Budget reductions caused program curtailment. The number of participants was down 1,000 from last year's 9,000 inmates who participated in community treatment center programs. All federal centers were marked for closing in 1982.

## Automated Information

During fiscal 1981, the Bureau completed installation of at least a single terminal in all federal institutions of the automated information system SENTRY. The Bureau now has an on-line computerized system containing information about all inmates in federal institutions—information that can be readily retrieved and updated. The Bureau also loaded its property management system and its Central Inmate Monitoring system onto SENTRY during the year.

## Professional Standards

To assure that correctional programs and operations are carried out in a humane and professional fashion, seven more Federal

Prison System institutions were accredited by the Commission on Accreditation for Corrections during 1981. This brings to 12 the total number of federal institutions accredited. Another seven institutions are involved in the process. The goal is for all to be accredited by 1984.

## Work and Training

To keep offenders constructively employed and to prepare them for jobs upon release, Federal Prison Industries, Inc. (UNICOR) had 80 industrial operations in 37 locations during fiscal 1981. Inmate employment in industries rose to 6,300 from 6,000 the year before.

Sales in 1981 exceeded \$126 million compared to \$117 million for the previous year. Inmate wages rose to \$7.8 million from \$7.7 million, and payment to other inmates in the form of meritorious service awards amounted to \$3.5 million, up from \$3 million. The corporation also funded \$2.8 million for vocational training programs for federal offenders, including apprenticeship training.

The occupational training program includes on-the-job training, vocational education, and approved apprenticeship programs.

The Bureau now has apprenticeship programs in 31 institutions, with 261 training programs in 75 different trade classifica-

tions registered by the U.S. Department of Labor's Bureau of Apprenticeship and Training—compared to 201 programs in 30 institutions in 1980. The Bureau's goal is to have apprenticeship programs in all of its institutions.

## **Equal Employment Opportunity**

Since 1971, 27 percent of all new Bureau of Prisons employees have come from minority groups. The level of minority employees was 22 percent at the end of fiscal 1981, compared to six percent in 1970. Minorities now account for 29 percent of the correctional officer force, compared to eight percent in 1971.

Women now represent 18 percent of all Bureau employees, compared to 10 percent in 1970. Female correctional officers are employed in all institutions except the maximum security penitentiaries.

## **Female Offenders**

The Bureau continues to improve programs for female inmates, as recommended by the Task Force on Female Offenders, established in fiscal 1979. The Federal Correctional Institution at Lexington, Kentucky, serves as a female medical referral center. A psychiatric unit has been established at Lexington to treat women with acute mental problems.

The Federal Correctional Institution at Alderson, West Virginia, during 1981 initiated a program that allows eligible inmates who are seven months pregnant to transfer to a residential setting in a nursing home for up to six months—two months before the birth of the baby and four months after. The Federal Correctional Institution at Pleasanton, California, operates a similar program.

With assistance from the Bureau of Apprenticeship and Training and its Women's Bureau, accredited apprenticeship programs for women have been started in such nontraditional vocations as auto mechanics, electricians, plumbers, painters, and bricklayers. The four institutions housing female offenders now offer 48 apprenticeship programs for 34 different trades.

Drug abuse programs exist in all four institutions for women and counseling and therapy are provided.

## **Medical Care**

During fiscal 1981, the medical facility at the Federal Correctional Institution at Terminal Island, California, was upgraded and established as a medical referral center for the western part of the country. It received a full two-year accreditation from the Joint Commission on Accreditation of Hospitals in February 1981, bringing the number of accredited hospitals in the Federal Prison System to eight.

The U.S. Public Health Service funded an evaluation of the Bureau's medical services. A total of 20 institutions were studied by a private health management firm. The final report, "Status of Health Care in the Federal Prison System," issued July 25, 1981, will be used as a resource document for planning and improving the health services program.

Health care facilities in each federal prison range from small dispensaries to accredited hospitals. They are staffed by 682 professional, technical, and support personnel—including 82 physicians and 52 dentists. Their efforts are supplemented by 600 local consultants.

## **Organization and Administration**

The Federal Prison System is a career service and a majority of new employees enter on duty as correctional officers. Administration is carried out by four divisions located in Washington and five regional offices. The four divisions, each headed by an Assistant Director, are Correctional Programs, Planning and Development, Medical and Services, and Federal Prison Industries, Inc. (UNICOR).

The five regions have headquarters in Atlanta; Dallas; Philadelphia; Burlingame, California; and Kansas City, Missouri. Each is headed by a Regional Director.

## **Resources**

Bureau appropriations for the year totaled \$361,868,000, and there were 10,213 authorized positions. Appropriations initially requested for fiscal 1982 are \$382,891,000 and 9,851 positions.

Energy conservation continues to have a high priority within the Bureau. During the year, 44 new energy conservation projects, valued at more than \$750,000, were established. These and other programs have resulted in an approximate 5.5 percent decrease in energy use during the year.

## **Future Plans**

The Bureau has a satellite camp under construction in Danbury, Connecticut, along with new housing units in Sandstone, Minnesota; LaTuna, Texas; and Seagoville, Texas. Also under construction is the Federal Detention Center in Tucson, which was due for completion in December 1981.

The decision was made to rely on private sector contract community treatment centers, and to close the eight Federal Community Treatment Centers in fiscal 1982.

Other plans call for conversion of the Federal Correctional Institution in Morgantown, West Virginia, into a facility for males and females serving Youth Corrections Act sentences, and the conversion of the Federal Correctional Institution in Englewood, Colorado, into a facility for males serving Youth Act sentences.



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## National Institute of Corrections

The National Institute of Corrections (NIC) was created in 1974 to assist state and local corrections. The Institute is governed by a 16-member, nonpartisan Advisory Board, and is administered by a Director appointed by the Attorney General.

During fiscal 1981, NIC made 193 grant and contract awards totaling \$9,391,412 to state and local corrections agencies, organizations, and individuals. The grants were for training, technical assistance projects, research and evaluation, policy formulation, and clearinghouse activities.

The Institute provided technical assistance in response to 976 requests from state and local agencies in all 50 states. Many of the efforts led to improved administration and management of correctional programs and services, offender classification, and physical plants. The Institute assisted Michigan, Idaho, Nevada, and New Mexico in the aftermath of riots. In the latter two states, expert advisors were assigned to the prisons to assist in the development of long-term planning and improvements. In another

major technical assistance effort, a team assisted the Commonwealth of Puerto Rico in responding to a court order mandating sweeping change throughout its prison system.

During the year, 3,500 state and local corrections practitioners were provided training through NIC auspices—topics including jailing, management, and institutional fire safety. Responding to recommendations of the Attorney General's Task Force on Violent Crime, the Federal Prison System and NIC cooperatively planned training for state and local corrections personnel in subject areas dealing specifically with controlling and reducing institutional violence.

On October 1, 1981, NIC training was consolidated with establishment of the National Corrections Academy. Endorsed by the Chief Justice and approved by the Attorney General, the Academy is located in Boulder.

The NIC National Information Center provided information in response to 4,628 inquiries from state and local practitioners during the year.

# United States Marshals Service

**William E. Hall**  
**Director**

The U.S. Marshals Service is the nation's senior federal law enforcement agency, created by the Judiciary Act under President Washington in 1789. Its Marshals and deputies serve as officers of the federal courts and law enforcement agents of the Attorney General. Their responsibilities include:

- Security or security assistance regarding federal property, buildings and personnel—including federal judges, jurors, other trial participants, and court facilities.
- Support to the federal judicial system through service of civil and criminal process; execution of warrants, including those for most federal fugitives; retention in custody and transport of federal prisoners; custody and control of seized property.
- Law enforcement activities at the request of other federal agencies or as required by the Attorney General.

The Service which began with 13 Marshals, now has 94—with a supporting staff of more than 2,100 Deputy Marshals and administrative personnel throughout the United States and Guam, Puerto Rico, and the Virgin Islands.

## Enforcement Operations Division

Fiscal 1981 was the second year of the Service's expanded responsibilities in the investigation and apprehension of federal fugitives. During the year, the Service received 11,492 federal fugitive warrants for prison escapes, bond violations, and parole and probation violations. With an emphasis on these priority cases, the Service cleared 12,880 fugitive warrants, reducing the case backlog by 13 percent. Two important improvements to the warrant program were initiated during the year: an emphasis on advanced and specialized training for program personnel; and development of the first comprehensive Marshals Service Investigator's Manual, providing expert operational and legal guidance to field personnel.

Increased participation in state/local automated criminal information systems by key district offices has provided an invaluable investigative tool while establishing a closer cooperative relationship with local agencies. The Marshals Service continued to assist other agencies in enforcement work endeavors, especially those agencies without the power of arrest. Lookout systems were maintained and established with appropriate agencies and were extensively utilized in the location of fugitives.

The Service successfully completed approximately 60 international extraditions during fiscal 1981. At the request of the United States National Central Bureau of INTERPOL, the Service also assumed responsibility for the investigation and apprehension of most foreign fugitives in the United States. Seventy-eight such cases were received in fiscal 1981, resulting in 44 being located, or a 56 percent success rate.

## Court Security Division

Ensuring the safety of federal judicial officials remains a high priority of the Marshals Service. Court Security Inspectors serve as advisors to the federal judiciary on security matters and provide technical guidance to Marshals across the country in the handling of high-risk trials.

Eighty-nine death threats were directed toward federal judicial officials in fiscal 1981, a record high. The increase resulted in numerous around-the-clock personal security details and the acquisition and deployment of highly sophisticated security equipment.

The Service doubled its use of electronic devices to prevent trial disruptions and enhance security for all participants, as the number of highly sensitive and difficult procedures requiring extraordinary measures reached a yearly high. Court Security Inspectors also provided security at 40 judicial conferences.

Inspectors specializing in physical security analysis continued to conduct onsite inspections and developed comprehensive security plans for buildings housing the federal courts. The Service provided funding for 276 guards of the U.S. Postal Service and General Services Administration, and for the installation and maintenance of security equipment.

Advanced specialized training in protective services was conducted for all Court Security Inspectors at the Federal Law Enforcement Training Center. The three-week course prepared Inspectors to plan and direct high-threat personal security details.

## Witness Security Division

The Witness Security Division is responsible for the protection of individuals whose safety is jeopardized as a result of their testimony on behalf of the government. Physical relocation, a new identity, and a variety of services are provided to those who are entered into the Witness Security Program.





tion facilities at a cost of \$21 million. The number of unsentenced prisoners requiring commitment to federal institutions increased by 33 percent from the previous fiscal year due to the continued loss of local contract detention space.

The division also carries out the Service's responsibility to contract for jail space to be used jointly with the Bureau of Prisons and the Immigration and Naturalization Service. During fiscal 1981, the Service negotiated special contracts with private organizations, such as the Salvation Army, to provide safe, minimum security detention and adequate child care for illegal alien material witnesses and their dependents. This contracting initiative has also helped increase the availability of jail space for regular federal prisoners.

Inmate population ceilings and court mandates for physical plant improvements continued to foster a shortage of nonfederal detention spaces in 1981, particularly in metropolitan areas. The number of contract jails under court order for substandard conditions increased, as did the number of facilities which imposed severe prisoner ceilings or totally excluded federal prisoners.

The Service, through its contract compliance inspection activity, continued to provide limited technical assistance to jails identified as having substandard conditions of confinement, and is in the process of implementing a Federal Excess Property Program to provide equipment and supplies to such facilities. Field inspectors are being encouraged to work closely and establish regular channels of communication with state jail inspectors. Working with the Texas Jail Standards Commission, the Service was able to prevent the closure of two important contract jails and to negotiate an acceptable federal prisoner population ceiling for those facilities.

The Service worked closely with the Bureau of Prisons to develop automated reports containing essential jail contract administration information.

## **Prisoner Transportation Division**

The Prisoner Transportation Division operates the Service's National Prisoner Transportation System (NPTS), which was responsible for the scheduling and transportation of more than 42,200 federal prisoners, including a small number of prisoners required by state and local courts in fiscal 1981. This was an increase of approximately 9.5 percent over the previous fiscal year. Increasingly efficient use of NPTS leased and chartered aircraft has reduced commercial airline trips—which cost an average of \$694 more per air-moved prisoner—by 24 percent over fiscal 1980. Closer coordination with the federal judiciary and U.S. Attorneys has eliminated a significant proportion of "crisis" movements requiring expensive air transportation. These results have been accomplished without the escape of any prisoner in transit and with a complaint rate approaching zero.

To enhance the efficiency in managing fiscal and operational resources, the division has participated in the formulation of the

Service's ADP Master Plan. When implemented, it will provide a comprehensive management information system and computerized scheduling and tracking of prisoner movements nationwide.

The division continued its efforts to reduce commercial air costs through such innovative means as centralized purchasing of tickets and the use of travel agencies to procure reduced fares.

## **Special Operations Group**

The Service maintains an elite, well-trained, highly disciplined, mobile reaction force known as the Special Operations Group, to provide a federal law enforcement response to emergency situations of national significance, and to provide law enforcement assistance to other federal and state agencies designated by the Attorney General.

Special Operations Group members are volunteers who have shown they can meet the Service's rigorous standards of physical and mental ability and strength of character. These full-time Deputy Marshals are on call 24 hours a day and can be assembled anywhere in the United States—fully equipped and self-supporting—within a matter of hours.

In fiscal 1981, the Special Operations Group was assigned such missions as: the execution of sensitive court orders; providing tactical training assistance to local and state law enforcement agencies; and security assistance at refugee holding camps. The Special Operations Group updated its training and operational capabilities—with emphasis on counter-terrorist tactics, hostage situations, confrontation management, riot control, and civil disorders.

The Posse Comitatus Act limits the use of military forces for the enforcement of local laws. Therefore, the unique capabilities of this small, elite group provide a reasonable means of handling emergency situations of national interest when adequate resources are not available on the local level.

## **Training Division**

During fiscal 1981, the Training Division trained approximately 605 Service personnel in 11 separate schools consisting of approximately 8,700 student training days at the Federal Law Enforcement Training Center at Glynco, Georgia. Training included three Criminal Investigator Schools, three Basic Deputy U.S. Marshal Training Schools, one Basic Witness Security Training School, three Protective Services Training Schools, one Fugitive Investigations Training School, six Advanced Deputy U.S. Marshal Seminars, three Chief Deputy U.S. Marshal Seminars, and two Administrative and Financial Management Training Schools. In addition, the division provided training to other participating agencies at the Center on their request.

The Service Armorer inspected 260 firearms and repaired a total of 384 weapons. In-depth research was conducted with a

view to standardization of rifles, automatic weapons, handguns, shotguns, and leather equipment. In addition to the Armorer's on-site responsibilities, he conducted three in-district weapons repair and range procedure evaluation sessions in conjunction with the Health and Safety Administrator.

The Basic Deputy Training Schools' testing and evaluation procedures, handouts, homework assignments, and training aids were revised and updated. A new curriculum was developed and implemented for all Advanced Deputy U.S. Marshal Training Schools. The Training Division, on numerous occasions during the year, provided logistical and staff support to the Special Operations Group, Enforcement Operations Division, Witness Security Division, Office of Legal Counsel, as well as other Headquarters elements.

Training personnel have been called upon to perform operational assignments—from foreign dignitary protection details, high-threat witness security details, sensitive internal investigations, and developing operational procedures and guidelines for the 94 district offices.

During fiscal 1981, the Training Division sponsored a total of 279 training incidents.

Additionally, six nominees were accepted for career development training at the FBI National Academy.

The Executive Development Program was expanded. Two courses were held in the subject area of Congressional Relations. A special Executive Development Program was developed and instituted for top-level managers in the Service. This program was instructed onsite at Service Headquarters. Full participation in various Attorney General's Executive Development Programs was sponsored by the Training Division. All eight reserved spaces were occupied by the Service's executives and managers.

Overall management of Class Recruit Evaluation Program packages were initiated for three basic recruit classes.

A Study Skills (one-day) program was developed by the division and implemented for the three basic classes conducted during fiscal 1981. This program is designed to increase skill in the use of library, note taking, study, testing, as well as listening and memory techniques.

Six other programs were funded from the Training Division's reserve budget in fiscal 1981—including jail contracting and witness security conferences.

## **Personnel Management Division**

The Personnel Management Division devoted a great deal of effort to the development and coordination of draft written performance standards for both field and Headquarters employees. In addition, the new performance appraisal systems for merit pay and all other employees were developed and implemented.

Consistent with its ongoing operational support function, the division staffed and processed approximately 5,300 individual personnel actions including promotions, hiring actions, within-grade increases, disciplinary actions, pay adjustments, etc. The

new Merit Promotion Plan instituted on October 1, 1980, was successfully implemented during fiscal 1981 with a number of key management positions filled under the provisions of the new plan during the year.

The division developed and presented a bloc of personnel management training to 250 Service management officials in nine different training sessions at the Federal Law Enforcement Training Center. The instruction was designed, among other things, to familiarize management officials with changes brought about by the Civil Service Reform Act.

The division initiated several projects designed to determine ways to enhance the services provided by the office to the field as well as several projects to increase employee productivity and effectiveness.

## **Information Systems Division**

This division was created during fiscal 1981 to concentrate within one office the higher technology functions of automated information systems, telecommunications, facsimile, and word processing. The division completed a Service-wide telecommunications requirements analysis in anticipation of the Department's upgrade of the JUST telecommunications system.

The primary modules of the automated Witness Security system were completed during the year while maintenance and enhancement support continued.

The major activity of the division was conducting a Service-wide information systems requirements analysis and development of a long-range systems development master plan. Based upon current missions and functions, the analysis revealed that the Service must develop 11 major operational and management information systems deemed vital to improving effectiveness and reducing administrative and paperwork burdens. With the current and pending budgetary cutbacks, the development and implementation of these automated systems become even more critical to the Service's goal of maintaining and improving productivity levels.

## **Procurement and Property Management Division**

In accordance with the Service's long-term program to fully equip all districts with basic administrative and operational equipment, the following were accomplished in fiscal 1981:

- The remaining group of districts were completely upgraded with new standard AR-15 rifles.
- All district offices located in high population areas were completely equipped with chemical agent riot guns for use in riot control situations.
- All district headquarters offices were equipped with paper shredders for use in destroying sensitive items related to criminal investigations and protected witnesses.

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- A sufficient number of security file cabinets were procured for districts for one to be assigned to each Enforcement Specialist and Witness Security Specialist.
  - Initial procurement of an increased capability mugshot camera was completed. This will serve as the prototype for future procurements with the goal of outfitting all high volume district offices.
  - Replacement of district calculators and binoculars was completed.

## **Space, Transportation, and Communications Division**

The Special Operations Group was equipped with the latest state of the art secure radio communications. The system, which

utilizes digital voice privacy, will furnish the Special Operations Group with the ability to handle very sensitive operations without radio communications being compromised.

The Service instituted Phase 2 of its Long-Range Radio Communications Plan, which consisted of procuring replacement fixed radio communications equipment and hand-held units. All equipment procured in this respect is equipped to be used in the voice privacy mode.

The Service adopted motor vehicle assignment criteria which resulted in a reduction of 110 motor vehicles. Allocations were set for each district resulting in reducing the mileage driven by the Service personnel by 2,150,000 miles—a 10 percent reduction. The Service consumed 298,442 fewer gallons of fuel than in 1980, a reduction of 18 percent. This was attributed to the reduction of miles driven, and to replacement of approximately 200 full-size sedans with midsize or compact sedans.



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## **The Justice System Improvement Act Agencies**

The Justice System Improvement Act was enacted on December 27, 1979, to reauthorize and restructure the Department of Justice's program to improve the administration of state and local criminal justice. The Act created four agencies, the Office of Justice Assistance, Research, and Statistics (OJARS), the Law Enforcement Assistance Administration (LEAA), the National Institute of Justice (NIJ), and the Bureau of Justice Statistics (BJS). The Juvenile Justice Amendments of 1980, enacted on December 8, 1980, reauthorized the Office of Juvenile Justice and Delinquency Prevention (OJJDP) and established it as another separate agency within the OJARS structure. Each of these agencies operates under the general authority of the Attor-

ney General. OJARS, LEAA, NIJ, and BJS are authorized through fiscal 1983. OJJDP is authorized through fiscal 1984.

The maximum authorized appropriation for each year is \$25 million each for NIJ, BJS, and LEAA's Community Anti-Crime Program, and \$750 million for other LEAA programs. At least 19.15 percent of the appropriated funds must be used for juvenile delinquency programs. This amount is in addition to the \$200 million per year maximum appropriation authorized specifically for OJJDP. Such sums as are necessary are also authorized for the Public Safety Officers' Benefits Act, under which LEAA provides a \$50,000 benefit to the survivors of public safety officers killed as the result of personal injury sustained in the line of duty.

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## Office of Justice Assistance, Research, and Statistics

**Robert F. Diegelman**  
**Acting Director**

The Office of Justice Assistance, Research, and Statistics is responsible for coordinating the activities of LEAA, NIJ, BJS, and OJJDP and providing the staff support for these agencies through the various offices described below.

During the year, the Office planned for and coordinated the termination of the criminal justice assistance programs. Reduced appropriations made the controlled phaseout of the LEAA program necessary, and the Office worked to assure that a planned, orderly winding down of program activities occurred. The Office maintains oversight responsibility to assure that awarded federal funds have been spent appropriately. In line with reduced program budgets and personnel levels across the Justice System Improvement Act (JSIA) agencies, the Office implemented an active employee outplacement program that, together with normal attrition, resulted in an overall 40 percent reduction in personnel during the past year.

The special task force the Office established to eliminate a backlog of civil rights complaints was disbanded during the year because it had successfully completed its work. From a backlog of 110 cases a year ago, the task force, working in cooperation with the Office of Civil Rights Compliance, reduced the backlog to just 20 cases, which could be handled by the permanent staff.

During the year, the Office led a drive to reduce a backlog of unresolved audit reports, thereby assuring the return of misspent funds to the government and the resolution of issues identified by federal auditors. Involving a number of Office units, this intensive effort caused the elimination of a backlog that had numbered more than 100 unresolved audits. At the same time, steps were taken to make sure such a backlog could not develop again.

The Office continued to work closely with the Advertising Council and the National Council on Crime and Delinquency to sponsor an effort to reduce crime in America. The initiative, called the National Citizens' Crime Prevention Campaign, was given national publicity through a "Take a Bite Out of Crime" public service advertising campaign that featured "McGruff," the Crime Dog. The campaign was supported by the Crime Prevention Coalition, a group of 50 national organizations and federal agencies and 15 state affiliates. The campaign reminded citizens that crime can be prevented by individual and collective actions and encouraged people to work closely with their local law enforcement agencies on crime prevention activities.

## Office of Civil Rights Compliance

The Office of Civil Rights Compliance monitors compliance with the civil rights responsibilities of the recipients of criminal justice system financial assistance under the Justice System Improvement Act of 1979 and the Juvenile Justice and Delinquency Prevention Act. This includes enforcement of Title VI of the Civil Rights Act of 1964, Section 815(c) of the Justice System Improvement Act of 1979, Section 504 of the Rehabilitation Act of 1973, as amended, the Age Discrimination Act of 1975, as amended, and the Department of Justice regulations promulgated for the implementation of these statutes (28 CFR Part 42).

During the year, an extensive review was conducted of the Knoxville, Tennessee, Police Department. Seven resolution agreements were negotiated and executed that were the result of previously conducted compliance reviews. Seven notices of non-compliance were issued warning of possible fund suspensions if compliance was not secured. Fund suspension was imposed in one case.

One hundred and ninety-two complaint investigations were completed. This was in part the result of the assignment of two groups of specialists, who were given extensive training in a classroom setting and on the job, then assigned complaint investigations. A total of 8.75 work years was contributed by professionals in this effort. As a result, the inventory of cases decreased from 184 at the beginning of the year to 58 at the end of the year.

## Office of General Counsel

The Office of General Counsel provides legal counsel on all activities, including the interpretation of the many laws affecting federal grant programs and federal employees. The office has the primary responsibility for drafting legislative proposals and regulations. It also participates actively in the prosecution or defense of any litigation. The office also provides advice on audit findings, agency contracts, and the operation of grant programs.

During the year, the office was actively involved in the drafting, enactment, and implementation of the Juvenile Justice Amendments of 1980. It also had a major role in two Court of Claims cases upholding LEAA's position denying the coverage of heart attacks under the Public Safety Officers' Benefits Act.

## Office of Planning and Management

The Office of Planning and Management provides staff support for policy development, planning, and management activities. It facilitates the coordination of these activities with NIJ, BJS, LEAA, and OJJDP by providing and receiving information, advice, and materials on program and management topics of mutual interest. The office also serves as the principal advisor to the Director of OJARS on policy and program matters that cut across these four organizations.

During fiscal 1981, the office was responsible for the following activities:

- Managed an OJARS-wide audit report resolution effort that resulted in the successful resolution of more than 100 delinquent audit reports.
- Served as the principal staff to the Director of OJARS for contingency planning, preparing for program phase down, and developing reorganization options.
- Provided substantive support and material for use by the Attorney General's Task Force on Violent Crime.
- Cooperated with the National Criminal Justice Association to provide state criminal justice councils with phaseout planning assistance, thereby helping assure accountability for federal funds, and also encouraging states to establish criminal justice planning as an ongoing function.
- Managed the National Citizens' Crime Prevention Campaign—"Take A Bite Out of Crime"—in partnership with the Advertising Council and the National Council on Crime and Delinquency.
- Worked closely with the National Governors' Association to encourage the institutionalization of criminal justice system planning and coordination in state governments.
- Responded to inquiries from the General Accounting Office concerning program and management activities within the five agencies.

## Office of Operations Support

The Office of Operations Support is responsible for directing and coordinating all activities concerning the internal and organizational support of the JSIA agencies.

The Personnel Division provides employee services to all components of the agencies. This includes the recruitment, selection, and placement of all employees. It also represents management in all labor-relations matters. Major activities during the year centered on the implementation of the legislative reorganization caused by the passage of the Justice System Improvement Act of 1979. These activities, along with the substantial decline in the personnel strength (from 490 in fiscal 1980 to 317 at the end of

fiscal 1981), resulted in increased efforts to provide innovative methods of dealing with expanding workloads while facing major resource reductions.

The Administrative Services Division is responsible for the management and provision of security, furnishings, telephone systems, equipment, maintenance, office space, mail services, and safety and health programs. In addition, the division assists the agency's grantees in obtaining excess federal property. During fiscal 1981, grantees obtained property originally costing \$254,626 at a reduced cost of \$63,656, realizing a total savings of \$190,970.

## Office of Public Information

The Office of Public Information is responsible for keeping the news media and the general public fully informed about JSIA agency activities. It responds to questions and prepares news announcements and feature stories about all agency programs of general interest.

The office arranges news conferences and briefings to explain the details of significant research findings, statistical reports, and important new program initiatives. It also prepares speeches, briefing papers, and policy statements for JSIA agency administrators and directors.

As the Freedom of Information Act office, it encourages the widest possible dissemination of information consistent with the law. During fiscal 1981 the office responded to 404 Freedom of Information Act and Privacy Act requests.

The office publishes a newsletter, Justice Assistance News, which is distributed 10 times a year.

During the past year, the office issued 28 news features on matters of national interest and 145 news releases of regional interest.

## Office of Congressional Liaison

The Office of Congressional Liaison is responsible for maintaining effective communications with Congress and providing general guidance in intergovernmental affairs. The office reviews proposed legislation affecting criminal justice and prepares statements for officials of JSIA agencies testifying at Congressional hearings. It retains a close working relationship with significant national organizations interested in the criminal justice system, particularly concerning mutual legislative interests.

## Office of the Comptroller

The Office of the Comptroller is the principal advisor to the Director of OJARS in matters relating to financial management. It is responsible for establishing agency policy in fiscal management, budget planning and execution, the agencywide account-



ing system, the financial reporting system, agency procurements, information systems, and grants administration. It also provides technical assistance and training to the other JSIA agencies and grantees. It coordinates the JSIA agencies' compliance with financial and grants management regulations and directives. The Office has six divisions: Accounting, Budget, Contracts, Financial Management and Grants Administration, Information Systems, and Policy Development and Training.

The Office of the Comptroller is responsible for providing data processing support, which includes internal, functionally-oriented systems, as well as national and state grant management information systems. These systems provide information to the 57 states and territories, the Congress, the Office of Management and Budget, the General Accounting Office, and program managers in the JSIA agencies. The office financed, coordinated, and monitored the development and installation of state-level management information systems whose data bases provide a wide variety of reports on current and completed grants. To date, 27 states have obtained grants to implement automated management information systems. Utilizing the office program classification system, 50 states have developed the capability to track grants and contracts from initial application through final close-out. Accomplishments in this area include:

- Computer generated grantee financial reports with pre-printed field and financial data entered by OJARS for the previous quarter. This document has resulted in fewer errors for the Accounting Division to resolve.
- System expansion to immediately log the receipt of such reports and quarterly progress reports.

- Computer generated letters to grantees who are delinquent in submitting their reports.

## **Public Safety Officers' Benefits Program**

The Public Safety Officers' Benefits Act of 1976 authorizes LEAA to pay a benefit of \$50,000 to the eligible survivors of state and local public safety officers found to have died as the direct and proximate result of injury sustained in the line of duty. Among those for whom coverage is intended are persons involved in crime and juvenile delinquency control or reduction, or in the enforcement of the criminal laws, including police, corrections, probation, parole, and judicial officers, as well as paid and volunteer fire fighters.

During fiscal 1981, 270 claims were determined to be eligible and 67 ineligible. This resulted in \$13.5 million in benefit payments during fiscal 1981. A total of 1,507 claims have been filed since the program's 1976 enactment. Of this number, 1,104 claims were paid, resulting in a total expenditure of \$55.25 million.

The program has an active appeals system. Twelve hearing officers hold appeal hearings throughout the country. After a comprehensive analysis of all testimony presented at the hearing and after consultation with legal and medical experts, these officers make determinations in accordance with program criteria.

The program has collected a wealth of information on line-of-duty deaths. During the year, this information was automated to support research into the causes and prevention of such deaths. The staff has begun research activities with national public safety federations and Department of Justice officials.

# Office of Juvenile Justice and Delinquency Prevention

**Charles A. Lauer**  
**Acting Administrator**

The Office of Juvenile Justice and Delinquency Prevention is responsible for developing and implementing effective methods for preventing and reducing juvenile delinquency; developing and conducting effective programs to prevent delinquency, to divert juveniles from the traditional juvenile justice system, and for providing critically needed alternatives to institutionalization; increasing the capacity of state and local governments and public and private agencies to conduct effective juvenile justice and delinquency prevention and rehabilitation programs and to provide research, evaluation and training services in the field of juvenile delinquency prevention; improving the quality of juvenile justice in the United States; and coordinating and providing policy direction to all federal juvenile delinquency related programs.

Within the Office is a research and information branch, the National Institute for Juvenile Justice and Delinquency Prevention. The Office also administers a special emphasis discretionary grant program through which it develops and implements national scope juvenile justice and delinquency prevention demonstration programs. Finally, formula grants are provided directly to the states and territories.

## Special Emphasis

The Special Emphasis Division is a national discretionary grant program responsible for the development and implementation of new approaches, techniques, and methods in juvenile delinquency prevention programs. Its resources are distributed to public and private organizations or individuals on a competitive basis to develop and implement innovative delinquency prevention programs.

During fiscal 1981, multiyear initiatives from prior years, especially 1980, were continued, supplemented, or updated. These included:

- Establishing nonresidential comprehensive, community-based treatment projects for adjudicated youth with a history of serious or violent offenses;
- Implementing projects that reduce the incarceration of adjudicated chronic juvenile offenders who commit serious crimes by requiring them to work and make monetary restitution to victims or perform victim or community service;
- Preventing the occurrence of crime and violence in and around schools by developing the capacity of local schools to use students, teachers, community persons, and justice system personnel to develop initiatives that eliminate the causes of crime and violence.

New initiatives funded in 1981 included the Atlanta Juvenile Crisis Program, supporting Atlanta with special programs for black youth most endangered or affected by the wave of murders in that city, and the Territories Allotment, providing 5 percent of the total 1981 special emphasis budget to insular areas, as required by statute, to increase their ability to implement the Juvenile Justice and Delinquency Prevention Act.

A new initiative for which developmental work was completed and applications were received in 1981 (with awards and implementation planned for 1982) was Violent Juvenile Offender—Part II. This initiative will identify methods to reduce violent and serious juvenile crime through the development, testing, and evaluation of particular neighborhood-based prevention strategies.

Approximately 60 grants for \$17 million were funded under the Special Emphasis Programs, of which 25 were awards to continuing projects and 35 were to new initiatives.

## National Institute for Juvenile Justice and Delinquency Prevention

The National Institute is a research, evaluation, training, and information dissemination division. It conducts research and collects information on delinquency and juvenile justice to keep abreast of the latest developments in these areas. It undertakes regular analyses of the various programs funded by the Office and is responsible for the assessment of the state of the art of juvenile delinquency and juvenile justice.

## Formula Grants

The Office provides formula grants to participating states and territories based on their population under 18 years old. The Formula Grants Division coordinates the distribution of monies to states for the development and maintenance of juvenile justice and delinquency prevention programs.

During the year, 44 states and six territories (Puerto Rico, American Samoa, Guam, Trust Territories, the Virgin Islands and the Northern Mariannas) received formula grant awards. The total amount was \$61,791,000. State and territory allocations are based on the juvenile population (under 18 years of age). The minimum allocation to each state was \$225,000. The minimum allocation to each territory was \$56,250.

The deinstitutionalization of status offenders and the separation of juveniles from adult offenders in jails and correctional fa-

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cilities were a major emphasis of the states during the year. Through 1981, 42 states demonstrated substantial or full compliance with the deinstitutionalization of status offenders.

## **Technical Assistance**

More than 500 instances of technical assistance were provided in 1981 by the Office's national contractors, including alternatives to the juvenile justice system, removing juveniles from adult jails, the deinstitutionalization of status offenders and nonoffenders, legislative reform, delinquency prevention, and the treatment of the serious and violent juvenile offender.

In 1981, the Research and Program Development Division awarded four new and 11 supplemental grants. The new grants were for research on minority youth involvement in the justice system and for a study of the effects of alternative residential programs on juvenile offenders. The supplements were for the continuation and completion of research and program development projects dealing with the sexual exploitation of children, the control of violent juvenile offenders, delinquency prevention, the reduction of school crime, and the improvement of justice system and alternative programs for controlling juvenile offenders. Draft 1982 and 1983 plans were also developed for a concentrated research and development effort to prevent and reduce violent and serious juvenile crime.

The Training, Dissemination, and Standards Division awarded 24 supplemental grants and contract continuations and initiated four new projects. The state of the art of juvenile justice training was reviewed and the findings will serve as the basis for expanding the program to serve more professional groups while focusing on serious and violent juvenile offenders.

A full review of information collection projects was made in an effort to reduce duplication and increase the reliability and comparability of the data. Clearinghouse operations were improved to meet General Accounting Office recommendations. The National Advisory Committee standards were completed and published. Plans for assisting state and local systems in implementing standards were initiated.

## **Coordinating Council**

The Federal Coordinating Council on Juvenile Justice and Delinquency Prevention is responsible for the analysis, coordination, and evaluation of all federal juvenile delinquency programs. Its responsibilities are best exemplified in the development of comprehensive plans and jointly funded national initiatives which result in an integrated federal response to juvenile justice and delinquency prevention issues.

All agencies that have responsibility for youth programming were active in the council's activities and helped the council complete its Fifth Analysis of Juvenile Delinquency Programs. This analysis included recommendations to the President and Congress on youth programs.

Thus far, the council has set priorities for youth programming in 1982, shared programmatic and budgetary information regarding youth, instituted a subcommittee on Native American youth to address the problem of the inappropriate placement of these youths, and reviewed the practices utilized by other federal agencies in the placement of youths under their jurisdiction.

The council's goal continues to be the coordination of youth programs to ensure their effective and efficient operation.



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# Law Enforcement Assistance Administration

**George H. Bohlinger III**  
**Acting Administrator**

Congress created the Law Enforcement Assistance Administration (LEAA) in 1968 to provide federal financial, technical, and research support to improve state and local criminal justice systems. Subsequent amendments expanded LEAA's responsibilities to improve juvenile justice and delinquency prevention, assist community-oriented anti-crime programs, and administer the Public Safety Officers' Death Benefits Program. The Justice System Improvement Act (JSIA) reorganized LEAA in 1979 so that its activities were coordinated with those of the other three JSIA agencies by the Office of Justice Assistance, Research, and Statistics. In 1980, Congress voted not to provide any funds for LEAA in response to budget revisions proposed by the President. Since then no new funding has been appropriated for the agency, and all administrative and program activities have been devoted to achieving an orderly phasing down of the program. The following summarizes the programs that were active in fiscal 1981:

## Office of Criminal Justice Programs

This office, the largest within LEAA, is the principal contact for state and local criminal justice agencies. It awards, monitors, evaluates, and terminates all planning and block action grants and manages most of LEAA's discretionary grants and technical assistance activities. The following divisions are part of the Office of Criminal Justice Programs:

### Criminal Justice Assistance

The three Criminal Justice Assistance Divisions are responsible for the management of the LEAA block grant program throughout the country, which is divided into Northeast, South Central, and Western Divisions.

### Enforcement Division

The Enforcement Division funds projects related to the deterrence, detection, investigation, and control of crime by state and local law enforcement agencies. It supports the Commission on Accreditation for Law Enforcement Agencies, which works to increase the effectiveness and efficiency in the delivery of law enforcement services, to increase citizen and individual officer confidence in law enforcement standards and practices, and to effect greater standardization of administrative and operational practices. The International Association of Chiefs of Police, the National Organization of Black Law Enforcement Executives, the National Sheriff's Association, and the Police Executive Re-

search Forum work together to provide a staff of law enforcement professionals for the commission.

The Integrated Criminal Apprehension Program (ICAP), also a part of the Enforcement Division, is a national program that provides grants and assistance to more than 40 municipal police departments to help them develop and install an operations system to improve the efficiency and effectiveness of police operation. In cities with ICAP, there has been a 31 percent increase in criminal apprehension by patrol units, an 18 percent increase in cases filed with the courts, and an 85 percent rate of apprehensions attributed to wanted or warrant bulletins prepared by ICAP analysis.

The Police Technical Assistance Project provided support and assistance to police departments participating in ICAP, the Managing Criminal Investigations Program, the Criminal Conspiracies Program, and the Commission on Accreditation for Law Enforcement Agencies.

The Counterterrorism Training Program funded courses on hazardous devices training, management seminars in terrorism, special operations and research staff, Federal Bureau of Investigation bomb data, Federal Aviation Administration airport security, and citizen security training. To date, more than 8,000 people have been provided training through this program.

The Anti-Fencing Sting Program is designed to disrupt the illegal redistribution system in stolen goods. To date, projects under these programs have netted more than \$291,421,308 in savings and recovered stolen property. Approximately 90 percent of recovered property was returned to rightful owners.

The Organized Crime and White-Collar Crime Program funds projects in intelligence development, prosecution, prevention councils, training, strike forces, corruption detection and investigation, and undercover fencing operations.

### Adjudication Division

The Adjudication Division's mission is to encourage and assist the criminal justice system leadership to improve and reform the nation's court systems through these programs:

In 1975, LEAA initiated the Career Criminal Programs which emphasized the expeditious prosecution of persons accused of serious violent crimes with previous felony convictions. Thus far, 70 jurisdictions have implemented the full program. By the end of 1980, more than 15,000 defendants were prosecuted in the reporting jurisdictions. Of these, approximately 13,750 were convicted of the most serious crime charged. The program uti-

lizes early case screening, identification of career criminal defendants, vertical prosecution (i.e., one prosecutor for the entire case) and the elimination of plea bargaining. The average sentence has been 15.1 years for convicted offenders. To date, 90 percent of the federally funded projects have been continued with local funds.

The Fundamental Court Improvement Program helped states reform their court or indigent defense delivery systems. In 1975, only three states had formal court planning. Today 41 states have statewide judicial plans. Court unification programs are being developed with major LEAA support in Alabama, Kansas, Kentucky, Massachusetts, Minnesota, Missouri, and North Dakota.

The Court Delay Reduction Program developed into a major court reform effort during the past year, and almost 60 metropolitan and state court systems benefited from the technical assistance, demonstration grants, and training. The program helps both trial and appellate courts improve case management.

The Jail Overcrowding Program assists metropolitan counties and states in dealing with overcrowded jails by focusing on the pretrial jail population. Forty-five metropolitan counties and three states have been involved in this program.

The Courts Training and Technical Assistance Program provides training for judges, prosecutors, defenders, lawyers, and court administrators to disseminate advances in court organization, administrative technique, technology applications, and substantive law reform. It also gives immediate short-term assistance to the major components of the adjudicatory process—courts, prosecution, and defense—through direct, onsite consultation and through clearinghouse services. Almost 7,000 court practitioners are trained annually.

The Juror Utilization and Management Program improves jury systems to ensure that they are more representative of the populace as a whole and less costly for taxpayers and employers. Currently, nine states and three localities have received grants to apply the management techniques that were shown to be effective in an earlier LEAA research and demonstration program.

## **Corrections Division**

The Corrections Division supports the operation and improvement of agencies and programs providing residential and nonresidential services to pretrial detainees, inmates, probationers, parolees, and ex-offenders. Its program includes the Treatment Alternatives to Street Crime that seeks to identify, treat, and monitor substance abusing offenders. The Treatment and Rehabilitation for Addicted Prisoners Program attempts to reduce illicit drug use and related criminal activity by providing treatment and rehabilitative services for serious substance abusing offenders while they are incarcerated in state correctional institutions or on subsequent parole release.

The Free Venture Prison Industries Program develops prison industries that will duplicate the conditions of private industry as closely as possible to prepare an inmate for eventual release. The Medical Care-Health Services Program is designed to transfer the

technology and expertise developed under earlier LEAA grants to new jails in additional states. During fiscal 1981, a continuation grant was made to the American Medical Association, which selected 23 state medical societies to participate in the program. It served 230 jails and reached several hundred thousand inmates during the year.

The Legal Services Program demonstrates effective and economical ways to ensure that incarcerated offenders have access to legal services and to the courts. Program activities include hiring staff, locating office space, acquiring equipment, and coordinating with various criminal justice agencies. Based on performance to date, it is estimated that 90 percent of requests for assistance are resolved administratively as a result of this program.

The Community Service Restitution Program tests alternatives to the typical correctional processing of selected offenders with a view toward lowering costs (as compared with incarceration) and providing service to the community while at the same time benefiting the offender.

The Correctional Facilities Energy Conservation Program reduces energy consumption in jails, prisons, and correctional facilities through a \$175,000 technical assistance grant coupled with an Interagency Agreement with the Department of Energy. LEAA initiated an effort to provide self-help support to corrections managers in their audit of energy consumption, development of plans to reduce consumption, and implementation of facility retrofit measures and conservation methods.

## **Correctional Standards Program Management Team**

The Correctional Standards Accreditation Program Management Team develops, demonstrates, and implements correctional standards in 11 states selected as demonstration sites for system-wide accreditation. The purpose of these projects is to demonstrate and evaluate the accreditation process as a method of implementing correctional standards.

## **Special Programs Division**

The Special Programs Division is responsible for the development and funding of multidisciplinary projects, national in scope, that included victim-witness assistance, domestic violence, and Indian justice.

The National Victim-Witness Strategy Program develops, expands, and improves services to crime victims and witnesses through the creation or support of networks of victim-witness service-providers and mobilizes existing nongovernmental groups and organizations.

The Integrated Police-Prosecution Program supports projects to improve the treatment of victims and witnesses by both the police and the prosecutor, thereby increasing the rate of successful prosecutions within a given jurisdiction. The program integrates and merges victim-witness activities to provide a unified approach to the handling of victims and witnesses.

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The Family Violence Program reduces or prevents violence between members of the same family or between persons who live together in the same household. It includes spouse abuse, child abuse, the sexual abuse of children, the abuse of parents by children, and other forms of intrafamily violence. To date, 35 local projects have had direct contact with more than 8,000 adult victims and approximately 2,000 children. Through these projects, approximately 5,000 days of shelter were provided, as well as 6,000 counseling interventions.

The Indian Criminal Justice Program funds projects to improve the quality of law enforcement and criminal justice on Indian reservations. Projects address all areas of the justice system—prevention, enforcement, adjudication, corrections, and juvenile justice.

## **Management, Training, and Evaluation Division**

### **Criminal Justice Manpower Planning**

Projects at Michigan State University, the University of South Florida, and Sam Houston State University work to adapt the methods of comprehensive manpower planning that have been successful in industry to law enforcement and corrections.

### **Police Recruitment, Selection and Training**

The California and Florida Police Standards and Training Commissions were supported in developments related to entry-level requirements. Florida conducted a statewide patrol officer job analysis to serve as a model for other states. California developed a comprehensive battery of tests for applicants, including reading and writing skills and physical performance.

The National Law Enforcement Explorers Program of the Boy Scouts of America introduces teenagers to careers in police work and to an understanding of crime and criminal justice. There are 1,800 posts, each sponsored by local agencies, with 33,000 participating girls and boys. LEAA supports the national programming and organization coordination.

### **Criminal Justice Higher Education**

The Joint Commission on Criminology and Criminal Justice Education and Standards was established by the concerned pro-

fessional societies under an LEAA grant to develop consensus norms for university programs. Because of the impact of crime on blacks and because of paucity of black holders of graduate degrees in the field, a center for Minorities and Criminal Justice was established in 1978 at the State University of New York in Albany; 21 students have received masters degrees, and at year's end six were actively working toward doctorates. Nine research reports and papers that increase the knowledge of criminal justice from the minority perspective have been published. In addition, criminal justice programs have been established and strengthened with LEAA support at Atlanta University, Talladega College, and Grambling State College.

### **Arson Unit**

The Arson Control Assistance Program combines investigative and prosecutorial expertise of federal criminal justice agencies with their financial and technical assistance capabilities. The objective is to help state, regional, county, and local efforts to reduce the incidence of arson and the human and economic loss related to arson. Some 34 projects have been funded through this program.

### **Public Safety Officers' Programs**

The Public Safety Officers' Benefits Act of 1976 authorizes LEAA to pay a benefit of \$50,000 to the eligible survivors of state and local public safety officers found to have died as the direct and proximate result of a personal injury sustained in the line of duty. During fiscal 1981, 269 claims from 1981 and all prior years were determined to be eligible for benefit payments that totaled \$13.5 million.

### **Office of Community Anti-Crime Programs**

The Office of Community Anti-Crime Programs was established by the Crime Control Act of 1976 to provide technical assistance, award grants, disseminate information, and coordinate groups in crime prevention efforts designed to mobilize communities and citizens in combating crime problems in both urban and rural America. The office has three major programs—Community Anti-Crime, Comprehensive Crime Prevention, and Urban Crime Prevention.



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# National Institute of Justice

**James L. Underwood**  
**Acting Director**

The National Institute of Justice sponsors research, development, testing, and evaluation to improve crime control policies and strengthen criminal justice operations.

It is divided into four parts. The Office of Research Programs supports studies to develop more effective approaches to crime prevention and control and increase knowledge about crime and criminal behavior. The Office of Research and Evaluation Methods supports projects to develop more reliable measures of the effects of crime control policies and assess the performance of criminal justice agencies. The Office of Program Evaluation sponsors assessments of the efficiency and effectiveness of criminal justice programs and procedures. The Office of Development, Testing, and Dissemination tests promising new crime control methods and transfers information about successful approaches to state and local officials who can put them into practice.

## Research Highlights

The Institute works to resolve major problems hampering the effectiveness of criminal justice agencies and to discover new and improved methods for controlling crime. Recent examples of the impact of its research and experimentation include:

- A new approach to managing criminal investigations that includes case screening and other tested techniques that have been shown to improve efficiency while maintaining investigative effectiveness. Some 1,300 state and local police officials received training under this program.
- Jury reforms in more than 100 courts that reduced jury pools and prompted other management improvements without adversely affecting the courts and contributed to a substantial cost savings.
- Sentencing guidelines that permit judicial discretion while encouraging greater consistency in sentencing. Some 20 states have, or plan to develop, sentencing guidelines. A field test in two states will evaluate the guideline concept.
- New strategies for combating arson that have been widely distributed to local communities and used by the Federal Bureau of Investigation and the Federal Emergency Management Administration in training and technical assistance.

## Violent Crime

Violent crime has been the subject of a wide variety of Institute research efforts, including the analysis of factors relating to violent behavior and the formation of criminal careers. Research also

focuses on specific types of violent crime, such as an analysis of research and statistics on robbery and homicide.

Guidelines concerning the release or detainment of dangerous defendants that were developed by the Pretrial Services Agency of the District of Columbia are being assessed under an Institute grant that will examine the effectiveness of the guidelines and their impact on pretrial detention. A related project awarded to Harvard University will bring together experts to examine issues concerning the treatment of dangerous defendants.

Institute research has shown that a few highly active offenders account for a disproportionate volume of crime. Because the habitual offender appears to be central to controlling violent crime, the Institute is continuing to focus on career criminal research. For example, a study is now estimating the impact of various sanctioning policies on the rate of serious crime, including the effects of more severe penalties for habitual offenders.

The research also showed that habitual offenders begin criminal activity early in their juvenile years, prompting a pilot study of the use of juvenile records in adult court proceedings. The study indicated that without these records young adult offenders with serious juvenile histories received lighter sentences than their older counterparts. Additional research will attempt to confirm this finding.

A related project will examine a program called "Operation Hardcore" that targets the habitual violent gang offender for vigorous prosecution. The Institute evaluation will examine the program's impact on the prosecution and sentencing of defendants selected for the program compared to a control group receiving routine prosecutorial treatment.

A research project is gathering information on the characteristics of violent offenders, including factors related to their behavior, careers, and treatment by the criminal justice system. The profiles will chart the start of criminality, intervals between offenses, patterns of offenses, and the likelihood of arrest, conviction, and incarceration. They will be used to attempt to predict future violent behavior.

## Victims and Witnesses

Institute research also focuses on the victims of particular crimes, including sexual assaults, and the needs of treatment of crime victims in general.

Programs in Seattle and the District of Columbia for treating the victims of child sexual abuse were designated last year as innovative models that other communities could follow. A careful validation of the programs demonstrated their effectiveness in

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treating sensitive problems while simultaneously encouraging vigorous prosecution of offenders.

An evaluation of 280 victim-witness programs showed that services to assist witnesses boosted their court appearances 10 to 15 percent. Another research project will examine the ways in which victims resist assaults and what results.

A program model on victim compensation was published last year. It presented guidelines for setting up and operating a statewide victim compensation program. The study will be updated in 1982 and will emphasize costs and revenue sources for operating such programs. Three jurisdictions are testing a new program that permits victims and witnesses to present their views in plea negotiation sessions. An evaluation will determine whether the program is a more efficient and equitable process.

## **Police Resources**

Drawing on police research that has challenged assumptions about the need for rapid police response to all service calls, the Institute has designed and implemented tests of differential police response in Toledo, Ohio; Greensboro, North Carolina; and Garden Grove, California. The police departments will implement a classification system that ranks calls and matches them with a variety of possible responses.

## **Courts**

Improving efficiency and equity in the pretrial process is another Institute research priority. Last year, it published the results of an evaluation of a program to reduce trial court delay in four courts that showed significant reductions in delays through the use of several strategies tailored to local conditions. Providence, Rhode Island, achieved the greatest reduction in median case processing time, dropping from 277 days to 61. Dayton, Ohio, decreased from 69 days to 43, Las Vegas from 61 days to 47, and Detroit from 40 days to 19.

Issues bearing on pretrial arrest and failure-to-appear were examined in a study that reported that speedier trials would have the greatest impact on reducing the rearrest rate of defendants. Trials held within 60 days would reduce the rearrest rate by one-third, and trials within 30 days would halve the number of rearrests. A suggestion to impose consecutive rather than concurrent sentences for pretrial crimes and other approaches to reduce multiple pretrial arrests is being explored in a study for which funds were awarded in 1981.

## **Corrections**

"American Prisons and Jails," an extensive study of the nation's correctional institutions, was published in 1981. It includes research into factors linked to changes in imprisonment rates or number of inmates confined, including projections for future changes in incarcerated populations; a survey of conditions in

prisons, jails, and halfway houses across the country; and studies of various sentencing reforms and their effects on imprisonment rates. The study found that the number of jail and prison inmates doubled between 1972 and 1978 and produced a wealth of data on prison populations and conditions which was published in a five-volume report.

## **Other Programs**

Highlights of programs to improve methodologies, evaluate criminal justice programs, and apply research findings follow:

### **Research Methods**

The Office of Research and Evaluation Methods sponsored an econometric approach that developed models to help determine answers to such questions as which size prison is the most cost-effective and what are the marginal costs of correctional services.

### **Evaluation**

An assessment of restitution programs found that they can handle a large number of offenders and are relatively inexpensive to operate. A reassessment of a crime prevention program in Portland, Oregon, found that the significant burglary reductions achieved under an earlier project were sustained two years after the project closed.

### **Research Utilization**

The Office of Development, Testing, and Dissemination produced nine documents to assist practitioners and policymakers in adopting improved strategies in law enforcement, adjudication, and corrections.

The office also designed and implemented field tests of particularly significant innovative programs, such as the differential police response test described earlier. Three field experiments were implemented last year, with each model program generally installed in two or three jurisdictions. Program guides on managing criminal investigations and team policing were also disseminated.

The office also sponsored training workshops in advanced techniques. Some 678 state and local officials participated in these sessions during 1981.

The Technology Assessment program developed five standards in 1981 and produced a guide to assist law enforcement agencies select the most effective light weight body armor. The armor, which is now virtually standard issue in police departments throughout the country, was first developed through Institute research.

More than 40,000 criminal justice practitioners, policymakers, and researchers use the Institute's National Criminal Justice Reference Service, which maintains a data base of 60,000 documents covering all aspects of crime and justice.

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## Bureau of Justice Statistics

**Benjamin H. Renshaw III**  
**Acting Director**

The Bureau of Justice Statistics is the national priority repository for statistical information concerning crime and the operation of criminal justice systems at all levels of government. It is the source of financial and technical support to state agencies in all states. It develops national information policy on such issues as data privacy, confidentiality and security, the interstate exchange of criminal records, and related issues.

The Bureau of Justice Statistics serves as an independent national center for criminal justice statistics. The Bureau:

- Collects statistics on crime and the responses to crime from federal, state, and local criminal justice agencies.
- Works to improve the accuracy, completeness, and usefulness of these agencies' statistics.
- Assists in developing adequate state and local statistics systems.
- Conducts surveys, censuses, and special studies in response to immediate policy issues confronting the Department of Justice and Congress.

The Bureau seeks the advice of the justice community through its 21-member Advisory Board, which is appointed by the Attorney General.

### National Indicators System Briefing

A major activity undertaken by the Bureau of Justice Statistics in 1981 was its participation in the National Indicators System of the White House Office of Planning and Evaluation. The National Indicators System is designed to inform the President, the Vice President, and White House staff of the social, demographic, and economic trends associated with domestic issues.

The Bureau, in consultation with representatives of the Federal Bureau of Investigation and other Department of Justice agencies, developed briefing material on criminal justice matters for the President, Attorney General, and Congressional committees. The material was also made available to criminal justice practitioners, public interest groups, educators, and others.

### Bulletins

Another major activity initiated during the year was the Bureau's bulletins. Their objective is to make regularly available statistical information on topics concerning crime and the administration of justice. The bulletins are prepared in nontechnical language for a broad audience. During the year, these bulletins were published: "Measuring Crime," "The Prevalence of Crime," "Prisoners in 1980," "Capital Punishment 1980," and "Prisoners at Midyear 1981."

### National Crime Survey

The Bureau's most important statistical series is the National Crime Survey, which is the nation's only regular crime rate measurement that collects data through national household surveys. The survey measures the national rates for rape, robbery, assault, personal larceny, household burglary, household theft, and motor vehicle theft. In March, the Bureau announced the findings of a new indicator that measures the proportion of households touched by crime.

Two reports on the impact of crime on the elderly presented findings on the extent to which the elderly are victimized compared to other age groups, the crimes to which they are particularly susceptible, and the consequences of this victimization. The Bureau also developed estimates on the costs of crime in the United States.

Work is currently under way to redesign the National Crime Survey. It incorporates advances in the methodology that have occurred since the program began in 1972.

### Dissemination of General Justice Statistics

During the year, the Bureau published the eighth annual edition of the "Sourcebook of Criminal Justice Statistics." It presents data from about 100 separate sources in a single volume.

The National Crime Justice Data Archive, operated by the Inter-University Consortium for Political and Social Research at the University of Michigan, expanded its activities and continued to acquire and disseminate data files for secondary analysis. The archive has begun to disseminate microfilmed tabulations of National Crime Survey data prepared by the U.S. Bureau of the Census for those data users lacking access to computing facilities.

### Court Statistics

The Bureau continued to support the National Court Statistics Project of the National Center for State Courts during 1981. It is designed to reestablish the Census Bureau's court caseload series, which was discontinued in 1946. The project staff completed compiling 1977 state court data and field-tested the model annual report format in one state. It also prepared for publication "State Court Organization, 1980," containing data on state court organization and management. The project provides continuing technical assistance to state court administrators in statistical matters.



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## Federal Statistics

During the year, the Bureau initiated a major program to serve as a primary resource for information concerning the overall operation of the federal justice system. The Bureau also identified and addressed such special issues as high technology and computer crime as well as government program fraud.

## Correctional Statistics Program

The Correctional Statistics program provides statistical information about parole, probation, and corrections through the National Prisoner Statistics Program, Special Studies in Correctional Statistics, Uniform Parole Reports, and the National Probation Reports Study.

The National Prisoner Statistics Program provides data about prison population, prisoner characteristics, and persons under death sentences. Three bulletins utilizing data from the National Prisoner Statistics Program were published in 1981, "Prisoners in 1981," "Capital Punishment 1980," and "Prisoners at Midyear 1981." This last bulletin marks the inauguration of a quarterly collection of prison population data.

During the year, the special report "Profile of Jail Inmates" was published. It was based on the sociodemographic findings from the 1978 Survey of Inmates of Local Jails.

The Bureau also published "Probation in the United States: 1979." It was the first national report that deals with population and workload statistics for adult probation. The Bureau plans to continue this series on aggregate probation data.

## Privacy, Confidentiality, and Information Policy

During the year, the Bureau undertook numerous projects to ensure both the confidentiality of statistics and research data and the privacy and security of criminal history information.

One project is identifying substantive and operational relationships between the legislative requirements and other federal and state requirements and appraising the effect of these requirements on the quality, utility, and confidentiality of data. Another project is analyzing the various techniques employed in maintaining confidentiality and security standards in operational research computer centers.

Efforts were also undertaken to help states and local agencies comply with the Bureau's regulations on the privacy and security of criminal history information. Several documents were released that reviewed recent legislation about privacy, security, and confidentiality.

## State Statistical Support Programs

During 1981, the Bureau expanded the analytic capabilities of the states, encouraged cooperation among the states in addressing common problems, and enhanced the ability of the states to provide the Bureau with data for national compilations.

With the Bureau's support, statistical analysis centers for criminal justice have been established in approximately 40 states. These centers provide statistical information services and policy guidance to the governors, Executive Branch agencies, legislatures, the judiciary, the press, and the public.

As each state statistical analysis center becomes fully established, federal funding for its operating expenses is ended. In nearly all instances, the state has assumed all or some of these costs. In many states, the statistical analysis center has been made a part of the state government by legislation or executive order.

During 1981, 12 grants and cooperative agreements were awarded to continue operating state statistical analysis centers.

The Bureau also supports the operation of state uniform crime reporting agencies in 44 states to facilitate the submission and improve the validity and reliability of arrest and clearance data submitted by local police agencies to the Federal Bureau of Investigation.

Major support for state and local agencies was provided in the design, development, and transfer of computer-based automated information systems such as the Prosecutor's Management Information System.

The development of criminal justice information systems during 1981 included AMICUS (Attorney Management Information and Cardfile User Support), a management information system for local public defender offices, and four law enforcement information systems programs. Thirty-three states are participating in the development of Offender-Based State Correctional Information Systems designed to meet the operational and management needs of state correctional departments and to provide data for correctional statistics programs. Twenty-eight states have achieved a basic operational capability. All of the systems should be fully implemented within the next year. Prototype information systems were implemented in selected states to support jail management and the management, operation, and statistical reporting of state prison industries. Analytic methods and techniques have been developed and are being provided to state correctional departments to use in forecasting prison population, statistical reporting, and the improved use of existing data bases.

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# Board of Immigration Appeals

**David L. Milhollan**  
**Chairman**

The Attorney General is responsible for the administration and enforcement of all laws relating to the immigration and naturalization of aliens. Certain aspects of that authority have been delegated to the Board of Immigration Appeals (8 CFR 3.1). The Board is a quasi-judicial body operating under the supervision and control of the Associate Attorney General. It is independent of the Immigration and Naturalization Service (INS), the agency charged with enforcement of the immigration laws.

The Board is composed of a Chairman and four members. The Chairman has an Executive Assistant/Chief Attorney Examiner, who has authority to act as an alternate member, and an Administrative Officer. Of the total Board staff of 41, there are 16 Attorney Advisors who assist in the preparation of Board decisions and 18 clerical and administrative personnel.

The Board is the highest administrative tribunal charged with interpreting and applying the provisions of the immigration laws. Its primary missions are to establish guidelines for the exercise of the Attorney General's discretion and to carry out the Congressional mandate that immigration laws receive uniform application throughout the United States. The Board accomplishes this in part by analyzing, refining, and clarifying policy and procedure in its decisions and, in part, by reconciling inconsistent orders issued by different officers of INS.

The Board has jurisdiction to hear appeals from specified decisions of INS in which the federal government, through INS, is one party and the other party is either an alien, a citizen, or business firm. Pursuant to a Department Order (No. 45-54, April 23, 1954), which has been endorsed by the courts, the Board is called upon to exercise its independent judgment in hearing appeals for the Attorney General.

The variety of cases reaching the Board consists of appeals from decisions rendered by immigration judges and district directors involving formal orders of deportation, discretionary relief from deportation, exclusion proceedings, claims of persecution, stays of deportation, bond and detention, petitions for preference immigration status for alien relatives of U.S. citizens and permanent resident aliens, and administrative fines imposed upon carriers because of violation of the immigration laws.

Appeals are decided by the Board in written opinions. Unless modified or overruled by the Attorney General, Board decisions are binding on all INS officers. Decisions relating to final administrative orders of deportation, which constitute the bulk of the Board's caseload, may be reviewed in the U.S. courts of appeals. Other Board decisions may be reviewed in the federal district courts.

The most important Board decisions—which address issues of first impression or resolve unsettled areas of law—are published as precedent decisions. These decisions, in addition to being binding on INS, are looked to for guidance by the Department of State, the Public Health Service, and the Department of Labor in order to coordinate their operations with INS.

During fiscal 1981, the Board disposed of 3,289 cases involving 3,682 aliens. This represents an increase over fiscal 1980 of more than 527 cases resolved. Forty-nine cases were designated as precedent decisions for publication. One Board decision was disapproved by the Attorney General.

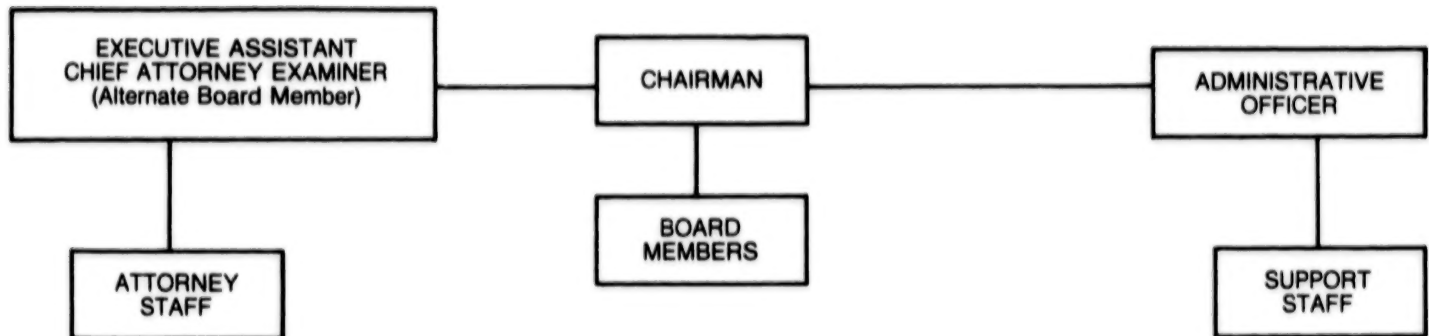
The Board is also responsible in large part for reviewing the qualifications and professional conduct of attorneys and representatives who practice before INS and the Board. In this regard, the Board is responsible for "recognizing" various qualifying nonprofit social agencies, which in turn may seek to have the Board "accredit" their representatives for such practice. During fiscal 1981, the Board issued 34 decisions involving "recognition" questions and 53 decisions concerning applications for accreditation of representatives. The Board, with the approval of the Attorney General, is also responsible for suspending or barring from practice before INS and the Board any representative or attorney, if the public interest so requires.

Following is a representative selection of Board decisions issued in fiscal 1981.

Previous international events continued to affect the number and nature of cases before the Board. The first event was the massive exodus of Cubans to the United States—over 100,000 Cubans landing in south Florida by boats during May and June 1980. Exclusion proceedings were thereafter convened against certain of the Cuban nationals, including those considered inadmissible because of criminal acts. These cases presented excludability issues as well as issues concerning the asylum and withholding provisions of the Refugee Act of 1980<sup>1</sup> which went into effect on April 1, 1980. These amended provisions not only expanded the availability of asylum relief to aliens present in the United States, but also established certain statutory grounds of ineligibility for relief, including ineligibility based on the commission of a "serious nonpolitical crime" prior to arrival in this country.

In *Matter of Castellon*,<sup>2</sup> the Board addressed the issue of whether it was proper for INS to pursue an exclusion order against a Cuban national solely on the basis of the alien's lack of a valid visa or other valid entry document, where the alien's excludability for criminal acts had not been sustained by the immigration judge. The Board held that it did not have authority to review the

### Board of Immigration Appeals



District Director's exercise of his exclusive jurisdiction over parole matters. Accordingly, the District Director's decision to terminate parole and place the applicant in exclusion proceedings was not reviewable by the Board. The Board's role in such proceedings was held limited to reviewing the immigration judge's findings regarding the applicant's excludability and eligibility for relief under the Refugee Act. The applicant's appeal was, therefore, dismissed.

In another Cuban exclusion case, the immigration judge found the applicant excludable under Section 212(a) (20) of the Immigration and Nationality Act, as an immigrant without the requisite entry documents. He made no finding as to whether the applicant was also excludable under Section 212(a)(9) of the Act as an alien convicted of a crime involving moral turpitude, notwithstanding the applicant's testimony that he had been convicted of burglary in 1977, for which he received a 10-year prison sentence. The Board held that since it was evident that the alien was placed in exclusion proceedings solely because he appeared inadmissible by reason of his criminal record under Section 212(a)(9), it was appropriate that a ruling be made with respect to that exclusion ground.<sup>3</sup> It was further noted that a record of conviction was not required to establish an alien's excludability under Section 212(a)(9).

The Board considered cases involving the imposition of administrative fines on boat owners who had transported Cubans to United States shores. In *Matter of "M/V Emma"*,<sup>4</sup> the Board concluded that a carrier who brought undocumented Cubans to this country was liable for a fine under Section 273 of the Act. That section makes it unlawful for any person to bring any alien without an unexpired visa to the United States and provides for the imposition of a \$1,000 fine for each violation found. The Board rejected the carrier's argument that the fine should not be imposed because some of the passengers had been forced upon it by Cuban authorities. It was held that liability under Section 273 is incurred with the bringing of any undocumented alien to the United States, regardless of the intentions of the carrier. The Board further held that the carrier had failed to exercise the

"reasonable diligence" required for remission of the fine under Section 273(c) of the Act by relying on the alleged implied consent of the U.S. Government to the bringing of Cuban refugees without ascertaining the requirements of the law and by placing the boat within the jurisdiction of the Cuban Government under the prevailing chaotic conditions.

Appeals taken by Iranian nationals identified through regulations promulgated in response to the November 1979, taking of American hostages at the American Embassy in Iran also continued to affect the Board's caseload. *Matter of Yazdani*,<sup>5</sup> involved an Iranian student who had been found deportable by the immigration judge under Section 241(a)(9) of the Act because she transferred schools without INS permission. The Board affirmed the decision of the immigration judge and held that the transfer of schools without INS permission constituted a distinct violation of student status which did not permit interpretation or evaluation. Distinguishing several cases involving the interpretation of regulations relating to the maintenance of student status,<sup>6</sup> the Board found that transferring schools without INS permission was a breach of a specifically defined regulatory requirement. Despite the student's characterization of her failure to secure advance permission to transfer as a "minor, highly technical" violation of her status, the Board noted that the regulation in question, like other regulations governing the activities of nonimmigrant students, is an essential tool in the administration and enforcement of the immigration laws.

In addition to the Cuban asylum cases previously discussed, the Board decided several other cases dealing with asylum issues. *Matter of Lam*,<sup>7</sup> involved a native of the People's Republic of China who fled to Hong Kong in 1961 and entered the United States as a crewman in 1974. The immigration judge granted the respondent's application for withholding of deportation from the People's Republic, denied a similar request for withholding from Hong Kong, and denied a request for asylum from both countries. Noting that both asylum and withholding of deportation required the same proof of persecution, the Board held that where a finding has been made that an alien's life or freedom would be threatened



in a given country it should also be found that the alien has demonstrated a well-founded fear of persecution in that country for asylum purposes. The Board further held that while firm resettlement in a third country would not preclude a grant of withholding to a specific country, it did preclude a grant of asylum in all cases. The record was remanded to the immigration judge for a determination of whether the respondent had firmly resettled in Hong Kong.

In *Matter of Saban*,<sup>8</sup> an application for asylum was filed with the immigration judge during an exclusion hearing pursuant to 8 CFR 208.3(b). The immigration judge entered a final order of exclusion without adjourning the hearing, indicating that he would reopen the proceedings after an advisory opinion was returned from the Department of State, Bureau of Human Rights and Humanitarian Affairs (BHRHA). The Board held that the immigration judge's entry of a final exclusion order before obtaining an advisory opinion from BHRHA, making it part of the record, and giving the applicant an opportunity to inspect, explain, and rebut the opinion, was incorrect. Accordingly, the appeal was sustained and the record remanded for further proceedings.

In *Matter of Martinez-Romero*,<sup>9</sup> the respondent, a native and citizen of El Salvador, conceded deportability during the deportation proceedings, requested voluntary departure for a period of six months in lieu of applying for asylum, and waived her right of appeal. The respondent was granted a six-month period within which to voluntarily depart. At the completion of her period of voluntary departure, the respondent moved to reopen the proceedings so that she could apply for asylum. The Board denied the motion noting that a motion to reopen for the purpose of applying for asylum and withholding of deportation will only be granted where a *prima facie* case of eligibility has been established. It was held that a statement that proof of eligibility would be offered at the reopened hearing did not constitute a *prima facie* showing of eligibility for relief. It was also noted that the respondent had failed to reasonably explain her failure to assert an asylum claim prior to completion of the deportation proceeding. The Board further found that the respondent's motion, consisting of conclusory assertions, generalized statements, and generalized newspaper articles, did not tend to establish that she would be subject to persecution for her political opinions and actions.

The availability of discretionary relief under Section 212(c) of the Act continued to be an active issue during the fiscal year. In 1977, in *Lok v. INS*,<sup>10</sup> the Second Circuit had rejected the Board's long-standing interpretation of the phrase "lawful unrelinquished domicile" in Section 212(c). Finding that this phrase could not be equated with the statutory terms "lawfully admitted for permanent residence", the court concluded that the requisite seven years of lawful domicile for Section 212(c) relief need not necessarily be accumulated after the alien acquires permanent resident status. Following a long and complex procedural history, the Second Circuit ultimately remanded the case to the Board for

consideration of the question of when Lok's lawful domicile in the United States terminated. INS argued that an alien's domicile terminated upon the immigration judge's finding of his deportability. The Board rejected this argument.<sup>11</sup> Upon a careful review of the statutory phrase "lawfully admitted for permanent residence", the various stages at which a lawful permanent resident's status may be considered to have changed, and the rights of an alien in the general deportation process, the Board concluded that the lawful permanent resident status of an alien terminates with the entry of a final administrative order of deportation, i.e., when the Board renders its decision in the case upon appeal or certification or, where no appeal is taken, when appeal is waived or the time allotted for appeal has expired. The Board concluded that lawful permanent resident status ought not to be considered to continue beyond the entry of a final administrative order of deportation through the judicial appellate process. In consideration of the Second Circuit's prior ruling as to the accumulation of the unrelinquished domicile, the Board concluded that the admission of an alien as a nonimmigrant was by definition inconsistent with the term "domicile" and that such alien could not therefore establish a "lawful unrelinquished domicile" for 212(c) purposes.

In an exclusion case, *Matter of Hill*,<sup>12</sup> the Board addressed the question of whether an applicant for admission, who freely admitted his homosexuality, was inadmissible under Section 212(a)(4) of the Act, as an alien "afflicted with psychopathic personality, or sexual deviation, or mental defect". The immigration judge had concluded that despite the applicant's repeated admissions of his homosexuality, he could not be found excludable as a homosexual absent a Class "A" certification issued by the Public Health Service. The Board disagreed and held that an applicant for admission can be excluded from the United States, absent a U.S. Public Health Service Class "A" certificate where he has made an unsolicited, unambiguous admission that he is a homosexual and where the current U.S. Public Health Service position that homosexuality cannot be medically diagnosed is a matter of record.

The Board also considered several significant visa petition cases during the year. An issue long in dispute involved the question of whether marriage alone created a steprelationship recognizable under the Act. This was particularly true in cases involving wives petitioning for their husband's illegitimate children. In the Board's two decisions in *Matter of Moreira*,<sup>13</sup> it was held that the existence of a steprelationship was a question of the parties' intent, rather than cohabitation in a "close family unit". It was the Board's conclusion that the legislative history of the Act supported a definition of a stepchild which required the existence of bona fide family ties and parental concern. The Ninth Circuit, however, in *Palmer v. Reddy*,<sup>14</sup> rejected the Board's approach and held that visa preference is available to beneficiaries who become stepchildren prior to their 18th birthday as a class without further qualification. In *Matter of McMillan*,<sup>15</sup> the Board adopted

the Ninth Circuit's approach nationwide. A beneficiary therefore now qualifies as a stepchild within the meaning of Section 101(b)(1)(B) of the Act upon the marriage of the petitioner and the beneficiary's parents as long as the beneficiary is under the age of 18 years at the time of the marriage.

Although the Board's decision in *McMillan* resolved the question of the establishment of the stepchild relationship, further questions remain as to the possible termination of such relationships. In *Matter of Mowrer*,<sup>16</sup> a case involving visa petitions filed by a petitioner who had been separated from the beneficiaries' mother, the Board concluded that the viability of the marriage on which the steprelationships were based did not determine whether the beneficiaries qualified as stepchildren. It was held there that the appropriate inquiry in cases where there had been a legal separation or where the marriage had been terminated by divorce or death was whether a family relationship continued to exist as a matter of fact between the stepparent and the stepchild.

#### CITATIONS

- (1) Public Law No. 96-212, 94 Stat. 102 (March 17, 1980)
- (2) Interim Decision 2847 (BIA 1981)
- (3) *Matter of Doural*, Interim Decision 2861 (BIA 1981)
- (4) Interim Decision 2862 (BIA 1981)
- (5) Interim Decision 2848 (BIA 1981)
- (6) *Mashi v. INS*, 585 F.2d 1309 (5 Cir. 1978); *Matter of Murat-Khan*, 14 I&N Dec. 465 (BIA 1973); *Matter of C-*, 9 I&N Dec. 100 (BIA 1960)
- (7) Interim Decision 2857 (BIA 1981)
- (8) Interim Decision 2870 (BIA 1981)
- (9) Interim Decision 2872 (BIA 1981)
- (10) 548 F.2d 37 (2 Cir. 1977)
- (11) *Matter of Lok*, Interim Decision 2878 (BIA 1981)
- (12) Interim Decision 2873 (BIA 1981)
- (13) Interim Decision 2720 (BIA 1979); Interim Decision 2792 (BIA 1980)
- (14) 622 F.2d 463 (9 Cir. 1980)
- (15) Interim Decision 2844 (BIA 1981)
- (16) Interim Decision 2846 (BIA 1981)

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# Antitrust Division

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"Competition" is the fundamental economic policy of the United States, and the mission of the Antitrust Division is to promote and maintain competitive markets. The Division accomplishes this mission in four basic ways. First, as a law enforcement agency, it brings criminal and civil antitrust cases, primarily under the Sherman and Clayton Acts, to prosecute violations of the law in particular markets. Second, it appears at proceedings of federal (an occasionally state) regulatory agencies where important questions of antitrust law or competition policy are at stake. Third, Division representatives participate in Administration policy groups and testify before Congressional committees as advocates of competition-oriented solutions to national problems. Finally, Division personnel speak as proponents of competition in seminars and before professional associations, business groups, and other organizations.

Such fundamental objectives as reducing excessively burdensome government regulation, and assuring that the private sector of the economy can achieve its maximum potential, play a prominent role in the development and administration of Division programs. For example, major initiatives underway in fiscal 1981 included: 1) revision of the Division's merger enforcement guidelines to assure that efficient transactions are not discouraged; 2) analysis of injunctive decrees from past antitrust cases to identify and eliminate those that could inhibit economically desirable activity; and 3) exploration of opportunities to intervene in private antitrust suits founded on faulty theories of illegality.

With a staffing level of 933 full-time employees, the Division filed 96 antitrust cases during fiscal 1981. It opened 270 formal investigations of possible violations of the antitrust laws, was involved in 503 cases or matters arising under various consumer protection statutes, and spent more than 4,100 attorney days in court on antitrust and consumer protection matters. The Division's Appellate Section filed briefs in 23 antitrust cases and 52 administrative law cases in the courts of appeals and the Supreme Court. The division also participated in 78 federal regulatory agency proceedings by filing briefs, appearing at hearings, or presenting oral arguments.

The Antitrust Division devoted substantial resources to competition advocacy in the legislative area during the past year. The Assistant Attorney General, or his representative, made 16 appearances before Congressional committees on matters relating to antitrust law and policy. The Division answered 256 requests from the Office Management and Budget and from Congress for comments on proposed legislation. The Division continued to provide information on a wide variety of matters to Congress and

to the public. It responded to 335 mail inquiries from the legislative branch, 337 inquiries referred to it by the White House, and several thousand inquiries received directly from the public. Four hundred and forty-eight requests filed under the Freedom of Information Act and Privacy Act were processed.

Competition advocacy by the Division in fiscal 1981 also occurred in a variety of other forums. Division personnel participated in numerous interagency and international committees dealing with a range of matters, such as patent policy, strategic minerals, energy, ocean shipping, and agricultural crop marketing. As required by various statutes, the Division provided advice to other federal agencies on the competitive implications of more than 450 proposed transactions, including mergers and acquisitions of financial institutions, disposition of surplus government property, federal coal leases, and outer continental shelf lease sales. The Division prepared statutory reports to the President and to Congress on such subjects as the activities of the International Energy Agency, the state of competition in the coal industry, and identical bidding in public procurement.

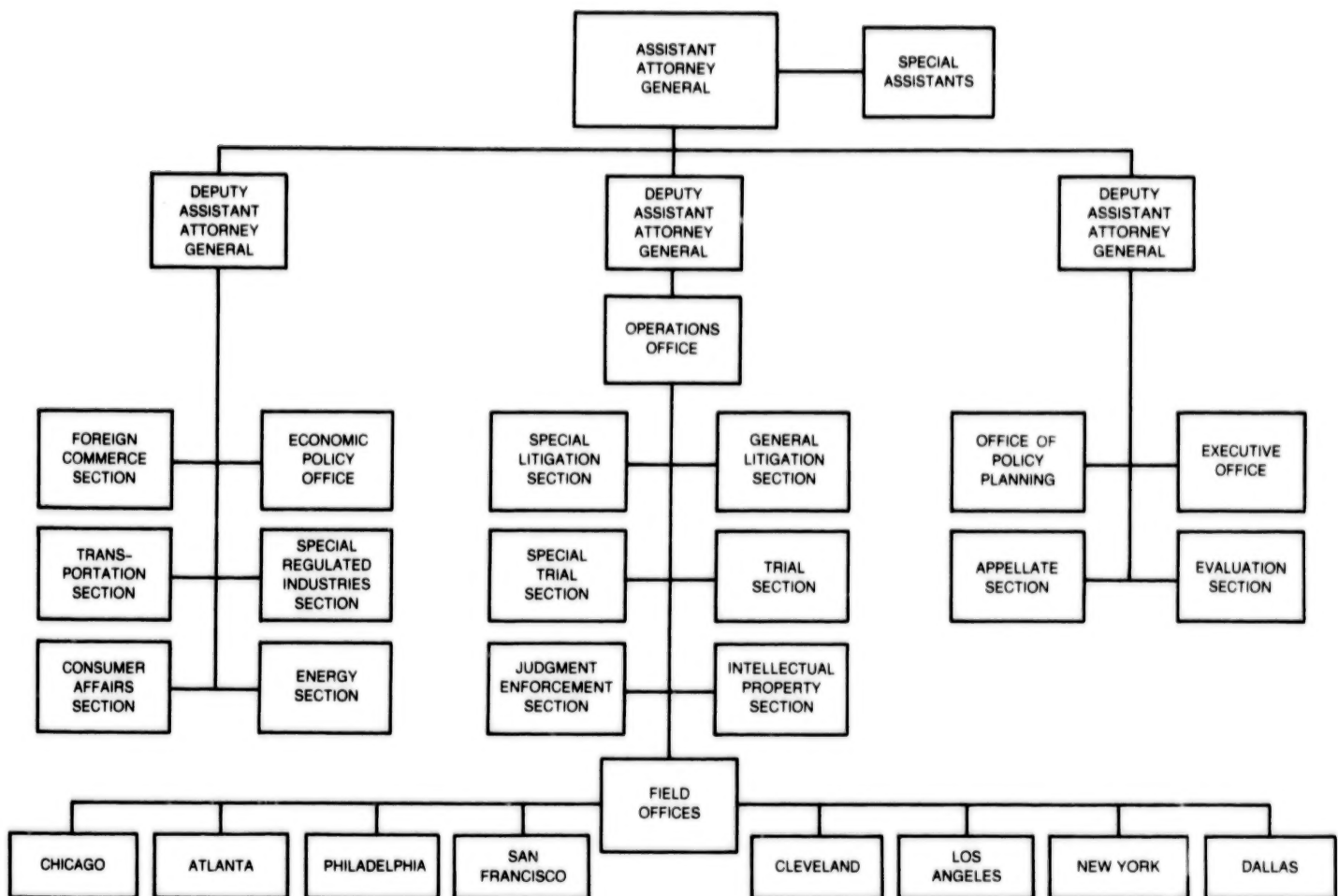
## Price Fixing and Other Restraints of Trade

The Antitrust Division places special emphasis on criminal enforcement as the major deterrent to cartel behavior. Protecting a deregulated and revitalized economy from price-fixing and kindred activities is crucial. Seventy-one criminal cases were filed during fiscal 1981 (compared with 55 in fiscal 1980); more criminal cases were filed this year than in any year since passage of the Sherman Act in 1890. The Division's emphasis on criminal enforcement was also reflected by a tremendous increase in jail sentences, from 1,441 days imposed in fiscal 1980 to 7,041 days in fiscal 1981, a total that is by far the highest in history. Fines and recoveries totaled more than \$19.6 million in fiscal 1981, the second largest amount on record.

During the last half of fiscal 1981, the Division de-emphasized cases involving vertical distributional restraints (involving different levels of a marketing system)—except where the purpose of the restraint was to impede competition horizontally among firms operating at the same level. This policy reflects the Division's conviction that many vertical arrangements generate desirable savings in product or service distribution, or otherwise promote efficient market operation. These same considerations have also prompted initiation of a project to assess various types of private antitrust suits as possible candidates for intervention by the Divi-



## Antitrust Division



sion. The Division would file briefs and make oral arguments, most likely at the summary judgment stage of selected private suits, in order: 1) to encourage sound economic analysis in the application of the antitrust laws; 2) in appropriate "rule of reason" cases, to urge an approach permitting summary dismissal of claims where the business practices at issue entail no prospect of actual competitive harm; and 3) to encourage courts to simplify and expedite those antitrust trials where legitimate competitive issues are truly at stake.

Enforcement actions against horizontal price-fixing and other restraints of trade in a variety of product areas were successfully completed in fiscal 1981. Examples include lumber, shopping carts, water heaters, milk, truck parts, concrete, and tires. Cases filed in fiscal 1981 and pending at the close of the year challenged anticompetitive practices affecting the sale of such products as meat, liquor and wine, coconut oil, and health foods.

The Division also continued its increased scrutiny of anticompetitive conduct in service industries. It filed a civil antitrust case against a real estate listing service that employed restrictive membership regulations to constrain competition among real estate

brokers. It also sued a number of attorney groups that sought to set prices for professional services or attempted to prevent non-lawyers from engaging in real estate closings and trust and estate services. Injunctive decrees were entered in other cases to eliminate price-fixing of real estate commission rates and repossession service fees, and to end interference with delivery of medical services by a health maintenance organization. A contempt case was successfully prosecuted against a real estate listing service for violation of a 1973 decree requiring that membership be available to any duly qualified real estate broker. The Division continued an ongoing program to review professional licensing board regulations, analyzing over 200 codes during the year to identify anti-competitive provisions.

The Division's enforcement program had a particularly strong impact on the road building and airport construction industries. During the year, the Division initiated 62 prosecutions involving 50 corporations and 75 individuals in connection with conspiracies to rig bids on public highway or airport construction in eight states. To date, 50 of these cases have been resolved in the government's favor. Fines totaling more than \$9 million have

been assessed and substantial jail sentences imposed. The Division's investigation is continuing, with grand juries underway in 14 states at year's end. The Division's effort has received significant assistance from the Department of Transportation and various state antitrust offices.

Although the Supreme Court did not consider any government antitrust cases in its last term, the Antitrust Division actively participated as *amicus* in several private cases, two of which were decided on the merits. The Court's decisions in those two cases should assist antitrust enforcement.

In *National Gerimedical Hospital v. Blue Cross*,<sup>1</sup> the Court reaffirmed the principle that immunity from the antitrust laws can be implied only where there is convincing evidence of a clear repugnancy between antitrust statutes and the regulatory system. Accepting the Division's *amicus* position, the Court reversed the decision of the Seventh Circuit and held that there was no clear conflict between the National Health Planning and Resource Development Act of 1974 and the antitrust laws.

In *Texas Industries, Inc. v. Radcliff Materials, Inc.*,<sup>2</sup> the Court accepted the Division's argument that neither the language nor the legislative history of the Clayton and Sherman Acts establishes that Congress intended to permit a right of contribution among persons who violate the antitrust laws and are subsequently sued for damages.

Reflecting the Division's emphasis on criminal enforcement of the antitrust laws, most of the Division's antitrust cases in the courts of appeals during fiscal 1981 involved primarily criminal law and evidentiary issues. Nevertheless, there were four significant decisions in civil cases: *United States v. Dairymen, Inc.*,<sup>3</sup> *United States v. Crocker National Corp.*,<sup>4</sup> *United States v. Realty Multi-List, Inc.*,<sup>5</sup> and *United States v. Columbia Pictures Industries, Inc.*<sup>6</sup>

In *Dairymen*, the Division successfully appealed from a district court order holding that an agricultural cooperative is not subject to antitrust laws barring attempts to monopolize unless the conduct at issue is found to be "predatory." Agreeing with the Division's position, the court of appeals concluded that the Capper-Volstead Act did not make proof of predation a prerequisite for demonstrating that an agricultural cooperative had violated Section 2 of the Sherman Act.

The *Crocker* case involved Section 8 of the Clayton Act, which prohibits (with certain exceptions) interlocking directorates between competitors. In a decision that may have a significant impact on the composition of bank and insurance company boards, the court rejected the argument that Section 8 does not prohibit interlocks between competing banks and insurance companies.

In the *Realty Multi-List* case, the Division appealed from a district court decision holding that the membership requirements of a multiple listing service did not violate the antitrust laws. The court of appeals reversed the lower court, finding that the multiple listing service had sufficient market power to give members a significant competitive advantage over non-members, and that

the membership requirements were not "reasonably necessary to . . . legitimate goals and narrowly tailored to that end". The court concluded that the membership requirements had an anti-competitive effect and no countervailing procompetitive benefit, and were therefore illegal.

In *Columbia Pictures*, the United States brought an action seeking to enjoin an agreement between several movie companies and an oil company for the formation of a pay television network program service. The Division's motion for a preliminary injunction was granted by the district court and summarily affirmed by the court of appeals.

## Preservation of Competitive Market Structure

The Division's second major enforcement program focuses on market structure and on anticompetitive practices that may lead to or stem from undue concentrations of market power. Under Section 7 of the Clayton Act, the Division challenges mergers that threaten to reduce existing or potential competition. It also invokes Section 2 of the Sherman Act to seek injunctive and structural relief from the adverse affects of monopolistic acts or practices.

Effective merger enforcement requires that information about proposed acquisitions be readily available before the mergers are consummated. Otherwise, the Division will be unable to challenge mergers in court until after the damage has been done. Under the premerger notification provisions of the Hart-Scott-Rodino Antitrust Improvements Act, the Antitrust Division (and the Federal Trade Commission) obtain information on all significant mergers. During fiscal 1981, 1,006 premerger notification reports were reviewed. After preliminary analysis, 66 expanded investigations were conducted. The Division also reviewed over 1,000 other mergers and acquisitions undertaken by banks and other financial institutions (up from less than 700 in fiscal 1980).

The Division filed four merger cases in fiscal 1981, all alleging the elimination of existing horizontal competition. The defendants in two of the cases settled on terms favorable to the government. The other two matters are still pending. Seven merger cases filed in earlier years were resolved in the government's favor.

A major initiative in the merger area is the Division's project to rewrite the Department's merger guidelines. Issued in 1968, the guidelines were designed to articulate the Division's enforcement intentions with respect to proposed merger transactions. Subsequent changes in economic analysis and judicial precedent have, however, rendered parts of the guidelines obsolete. As a result, the freedom of businesses to undertake competitively unobjectionable mergers is unjustifiably inhibited and, more seriously, economically desirable mergers are deterred. The revision project is intended to correct these deficiencies.

Concomitantly with the project, the Division is also planning to review the reporting requirements imposed on merging parties by the Hart-Scott-Rodino Act. The review will focus on requirements that may be too burdensome and that could be relaxed with no loss to the efficacy of the merger screening program.

The Division's efforts to curb monopolization continued. In one case, a decree was entered to terminate unlawful practices by a firm that had obtained a monopoly in the production of industrial nitrocellulose, a synthetic resin used extensively in lacquers, paints, textile and paper coatings, book bindings, and printing ink. A complaint was filed in another matter against an electric utility company for abusing its monopoly over transmission of electric power. The complaint charged that the defendant had prevented competing suppliers from selling power to the defendant's wholesale customers.

As to the Division's major monopolization cases, presentation of witnesses in the International Business Machines Corp. case was completed and, at year's end, the parties were preparing their final briefs for the trial court's consideration. In the American Telephone and Telegraph Company (AT&T) case, trial commenced in January 1981, and is scheduled for completion in February 1982.

## Other Antitrust Activity

A major Division project, initiated in fiscal 1980 and pressed forward this year, is to assess all the antitrust decrees obtained by the Division since passage of the Sherman Act in 1890. The Division has now identified, and catalogued by computer, over 1,400 decrees entered in 1,225 completed cases. The principal purpose of the review is to locate decrees that may be having undesirable, anticompetitive effects, or whose continued existence may otherwise disserve the public interest. Court petitions seeking the modification or termination of such decrees will be filed as appropriate. This effort springs from the Division's belief that deregulation of markets controlled by outdated antitrust decrees is just as urgent as deregulation of industries sheltered by anticompetitive statutory schemes.

In actions separate from the decree review project, the Division consented to modification or termination of more than 20 older decrees in court proceedings initiated by affected defendants.

## Regulated Industries

During fiscal 1981, the Antitrust Division pursued competitive goals in regulated industries through both direct antitrust enforcement and advocacy of regulatory reform. It urged elimination of unnecessary or counterproductive governmental interference with free market forces, and where legitimate regulatory objectives were at stake, sought adoption of the least anticompetitive means of market intervention.

In the transportation sector of the economy, the Division participated actively in many proceedings before the Interstate Commerce Commission, the Civil Aeronautics Board, and the Federal Maritime Commission. In the Interstate Commerce Commission's *Western Railroads Agreement* proceeding, the Division urged narrow construction of the carriers' antitrust immunity for price-fixing. This matter was particularly important because it involved the first railroad rate bureau agreement considered for approval under the recently-enacted Staggers Rail Act. The Division also participated in proceedings relating to the Union Pacific—Missouri Pacific—Western Pacific merger, and the Norfolk & Western—Southern merger.

The Division successfully urged the Civil Aeronautics Board to increase marketing flexibility for sellers of airline tickets and related services. Travel agents and airlines may now price their products independently, whereas they were previously required to charge the tariffed rate. The Division also appeared before the Board in the Continental—Western airlines merger proceeding.

In fiscal 1981, the Division successfully concluded a price-fixing case filed last year against the three dominant firms in the auto drive-away industry. A civil suit against the adoption and use of a rate book by oil tanker ship brokers was settled by a decree terminating publication of the book.

The Division filed comments in 13 proceedings at the Federal Communications Commission. The Division urged the Commission to reconsider its decision allocating one of every two cellular radio franchises in any community to the local wireline telephone company. The Division also questioned the effectiveness of proposals to regulate license contracts under which telephone operating companies pay a percentage of their revenues for research and other services from such companies as AT&T. In another matter, the Division successfully opposed a proposal by AT&T to waive the Commission's requirement of a fully separate subsidiary for offering such enhanced services as call answering and advance calling. The Division supported Commission proposals to create new low-power television service with original programming capacity; to allocate additional VHF television channels; and to terminate telephone company cable cross-ownerships in narrowly defined rural areas. The Division urged the Commission to minimize regulation of direct broadcast satellites (DBS) by permitting cross-ownership of DBS and other media, except in specific situations where the potential cross-owner has substantial market power.

Direct antitrust enforcement was also pursued in the communications industry. As noted earlier in the discussion of important appellate decisions, the Division argued successfully in the *Columbia Pictures* case that the joint venturers' collective withholding of first-run motion pictures from other pay-television programmers constituted a group boycott, and that their revenue pooling arrangements constituted a price-fixing agreement.

In a proceeding before the Postal Rate Commission, the Division argued that the U.S. Postal Service should be barred from permanent entry into the offering of electronic mail service. Since



private vendors are willing and able to provide such a service, there was no showing that a government entity should offer electronic mail, or that such service need be regulated.

The Depository Institutions Deregulation and Monetary Control Act of 1980 and shifting economic conditions brought continuing change to the banking industry. The Division supported eventual deregulation of deposit rate ceilings in comments filed with the Depository Institutions Deregulation Committee. The Division also urged the Committee to permit regulated financial institutions to offer products competitive with money market mutual funds.

The Division recommended that the Federal Reserve Board not adopt proposed pricing principles and fee schedules for Federal Reserve Bank services, including automated clearing. The Division urged the use of a pricing schedule that accurately reflected all costs, arguing that several aspects of the proposed schedule would only serve to inhibit private sector competition with the Federal Reserve and thus continue the dominant role of the Federal Reserve in the national payments system. The Federal Reserve Board adopted many of the Division's suggestions, but also announced that it would continue an "incentive pricing" schedule for automated clearinghouse services.

The Division supported various proposals to permit interstate activity by banking entities. These included a proposal by the Federal Home Loan Bank Board to allow federally chartered savings and loan associations located within the Washington, D.C., area to branch throughout the area without regard to state boundaries. In addition, the Division recommended nationwide interstate branching for thrift institutions, citing as supporting reasons the new powers given savings and loan associations under the Depository Institutions Deregulation and Monetary Control Act of 1980, the publication of the President's Report on the McFadden Act (which recommended interstate branching), state initiatives to lower barriers to interstate commercial banking, and the financial difficulties of the thrift industry.

The Division recommended to the Federal Reserve Board that banks and bank-holding companies be allowed to acquire thrift institutions, stating that such acquisitions were "a proper incident" to banking under the Bank Holding Company Act, and would increase the quality of competition in savings deposit and mortgage lending markets. The Division endorsed a proposed Federal Home Loan Bank Board rule that would permit federally chartered savings and loan associations to acquire failing associations in other states, and a Board proposal to remove all geographic restrictions on the placement and use of remote service units (automated teller machines) by federally chartered savings and loans.

In comments filed with the Securities and Exchange Commission, the Division supported a Commission proposal providing that if any market center (including exchanges) made a market for a reported security, then the mandatory dissemination of bids, offers, and quotation size data for the security would be limited. In a proceeding at the Commodity Futures Trading Commission,

the Commission opposed the registration of the National Futures Association as an industry self-regulatory organization.

Evaluation of proposed mergers represented a significant share of the Division's activity in the energy sector during the year. The most significant matter involved a merger ultimately not consummated) of two large, vertically integrated petroleum companies operating in several fossil fuel markets, including oil, gas, and coal—Mobil and Conoco.

The Division continued its role in reviewing the antitrust implications of the Outer Continental Shelf (OCS) oil and gas leasing program administered by the Department of the Interior. Pursuant to its statutory duties under the OCS Lands Act Amendments of 1979, the Division analyzed numerous OCS lease sales and lease assignments during fiscal 1981. Additionally, the Division submitted formal comments pertaining to the Department of the Interior's proposed five-year leasing program, a project designed to accelerate the leasing of all remaining drilling sites.

Similarly, under the Naval Petroleum Reserves Production Act of 1976, the Division conducted numerous antitrust reviews concerning the issuance of new contracts for exploration, development, or production of petroleum in California. In addition, in December 1980, Congress authorized the Department of the Interior to commence development of the Alaskan Petroleum Reserve. The Division thereafter consulted with the Department of the Interior regarding promulgation of rules for the new leasing program, and assisted in formulating a system for the efficient and expeditious review of the lease sales scheduled to begin in late 1981.

Under the Deepwater Port Act, and in cooperation with the Department of Transportation and the Federal Trade Commission, the Division reviewed and approved the operations manual for the Louisiana Offshore Oil Port, the nation's first deepwater port. In addition, the Division conducted an antitrust review of the Texas Oil Port (TOP), a deepwater port proposed for the Texas Gulf Coast. License conditions recommended to the Secretary of Transportation were in large part adopted in the final license offered to TOP.

Pursuant to Section 252 of the Energy Policy and Conservation Act, the Division, along with the Federal Trade Commission, monitored approximately 40 meetings of the International Energy Agency held in the United States and overseas. The Division also participated in the Interdepartmental Group on International Energy Policy chaired by the Department of State.

In the electric power area, a Federal Energy Regulatory Commission Administrative Law Judge issued a November 1980, opinion upholding the Division's position in the *Niagara Mohawk* proceeding. There, the Division opposed the refusal by a utility company to transmit electric power to a prospective wholesale customer of another utility. The Division also participated in the Commission's *Central Power and Light* proceeding, which involved the issue of what type of electrical interconnection should be established between Texas and the rest of the nation.

In 1981, the Nuclear Regulatory Commission's (NRC) Atomic Safety and Licensing Review Board rendered an opinion in *Alabama Power Company*, upholding the Division's position that the petitioning company's monopoly over generation and transmission would make issuance of an unconditioned license to it anticompetitive. In a separate matter, the Licensing Board accepted the settlement license conditions negotiated by the Division in the *Florida Power and Light* proceeding. Finally, the Division rendered antitrust advice to the NRC in connection with numerous applications for the construction and operation of nuclear power plants.

The Department submitted its third Report on Competition in the Coal Industry to Congress in November 1980. The Report focused on competition in the transportation of coal, and concluded that one western railroad did have significant power in that market.

In the solar area, the Division participated in the Interagency Task Force on Solar Energy chaired by the Department of Energy. In January 1981, the Secretary of Energy withdrew proposed appliance energy efficiency standards, citing in part comments that had been filed by the Division.

## Foreign Commerce

During the year, the Antitrust Division continued to monitor import and export trade for cartel or other restrictive business practices that have an adverse impact on prices or supplies of important consumer goods. Several investigations of such activity were initiated or continued.

The Division participated in a number of proceedings before international trade regulatory agencies in fiscal 1981, filing comments in antidumping and "unfair" import competition matters. It also continued its work as the Attorney General's representative to the Cabinet Council on Commerce and Trade and to the Trade Policy Committee and its subcommittees. The Cabinet Council on Commerce and Trade is composed of Cabinet officers who are particularly concerned with domestic and international economic policy. The Trade Policy Committee is an interagency group that develops trade policy and advises the President on the resolution of particular trade cases. The Division also represented the Department at meetings of the Committee on Foreign Investment in the United States, chaired by the Department of the Treasury.

The Division participated actively in the work of the Organization of Economic Cooperation and Development's Committee of Experts on Restrictive Business Practices. The Committee recently approved and published a study on antitrust and buying power, and also continued its examination of international antitrust investigative methods, relationships between antitrust and the professions, and merger policies in member countries. At the United Nations, the Division took a leading role in developing a set of voluntary principles and rules for the control of restrictive

business practices. These rules, which were adopted unanimously by the United Nations General Assembly in December 1980, provide guidance for U.S. enterprises doing business in developing countries, and create a mandate for continuing the United Nations' expert and technical assistance work in the antitrust field. The Division was also a member of the U.S. delegation seeking to negotiate a Code of Conduct for the International Transfer of Technology.

The Division continued to participate in bilateral discussions and negotiations with other countries concerning antitrust enforcement cooperation, and also received delegations of antitrust and other legal officials from several foreign nations interested in American antitrust law, enforcement policies, and programs.

## Consumer Affairs

The Division (through its Consumer Affairs Section) is responsible for litigation arising under the Federal Food, Drug and Cosmetic Act, the Consumer Product Safety Act (and other statutes administered by the Consumer Product Safety Commission), civil penalty and forfeiture cases arising under the Federal Trade Commission Act, and various provisions of the Consumer Credit Protection Act. The Division also enforces federal injunctive, civil penalty, and criminal provisions that prohibit automobile odometer tampering and require accurate mileage disclosure.

During fiscal 1981, the Division was involved in approximately 400 enforcement or defensive cases involving the Food and Drug Administration, 14 Consumer Product Safety Commission matters, and 64 new case referrals from the Federal Trade Commission. The Food and Drug Administration was defended successfully in seven separate lawsuits challenging the Food and Drug Administration's drug safety policy. Pursuant to that policy, the Food and Drug Administration had determined that it would accept drug studies published in scientific literature as evidence of a drug's safety and efficacy, rather than requiring independent studies by manufacturers.

The Division continued its vigorous enforcement of the Food, Drug and Cosmetic Act, successfully concluding criminal actions involving the insanitary storage of food and the shipment of goods without required permits. Several cases were instituted seeking civil penalties for violation of the Radiation Control Act. The Division was also involved in the defense of the Food and Drug Administration in a variety of cases dealing with such diverse regulatory matters as the continued provisional listing of certain color additives, regulation of the sale of corn with aflatoxin, and the use of nitrites in meat.

In its enforcement of statutes administered by the Consumer Product Safety Commission, the Division successfully defended the Commission's authority to propose a ban on urea-formaldehyde foam insulation. In another case, the Division's argument that the Commission is empowered to assess civil penalties administratively was accepted by the cognizant court. The



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Division also successfully represented the Commission in a number of injunction and civil seizure cases arising from the Commission's cellulose insulation regulation, and litigated a criminal contempt action for violations of two 1978 court orders prohibiting the shipment of TRIS-treated children's garments.

During fiscal 1981, the Division continued its emphasis on enforcement of federal odometer statutes. In cooperation with the National Highway Traffic Safety Administration (NHTSA), the Federal Bureau of Investigation, and a number of U.S. Attorneys and state officials, the Division conducted several grand jury investigations into allegations of illegal odometer rollback activities. The Division received a favorable ruling upholding NHTSA's authority to compel production of documents from a suspected odometer tamperer.

The Division instituted actions under the Federal Trade Commission Act in which civil penalties and injunctive relief were sought for violations of Commission cease and desist orders, trade regulation rules, and statutory provisions prohibiting anti-competitive conduct, unfair or deceptive marketing practices, and unfair debt collection techniques. The cases involved illegal marketing methods in the sale of health products, magazine subscriptions, and mail-order items; unlawful debt collection practices; and a failure to divest in violation of a Commission order. The Division is currently litigating a case against a major car rental firm for violating the Commission's Holder-in-Due Course Rule.

The Division expanded its role in inspection warrant cases, defending attempts by client agencies to inspect firms under their jurisdiction. In one case, the Division withstood an attack on the Food and Drug Administration's efforts to inspect a meat by-products firm.

In all, the Division's Consumer Affairs Section maintained an average total caseload of 850 cases during fiscal 1981, and obtained judgments for fines, penalties, and forfeitures of approximately \$1,176,000.

## **Business Reviews and Other Advice to the Private Sector**

Although the Department is not authorized to issue advisory opinions to private parties, in certain circumstances the Division reviews proposed business plans at the written request of interested parties and states its present enforcement intentions. Such statements are issued under regulations providing that the request and response will be announced at the time a business review letter is released. These letters, and the supporting information supplied by the requesting parties, are available for public inspection in the Legal Procedure Unit of the Antitrust Division, Room 7416, Department of Justice, 10th Street and Constitution Avenue, N.W., Washington, D.C. 20530. Supporting information is withheld from public inspection only if the requesting party shows good cause for doing so.

The Division responded to 19 business review requests during fiscal 1981. Proposals that received favorable review include a number of joint ventures, among them plans to market electric load management systems, operate cattle feedlots, engage in litigation against a water common carrier for delays in freight handling, and disseminate point-of-sale health warnings to tampon retailers. Also favorably treated were several data collection and dissemination proposals relating to residential real estate loans, crude oil resale prices, salaries and benefits paid to non-lawyer employees by law firms, and contract terms offered to retailers by issuers of travelers' checks.

The Division was unable to provide favorable business reviews in several instances. For example, it expressed objection to a proposal whereby a member of the auto workers' union would be elected to a board of directors of one automobile manufacturing company at the same time that the union's president served on the board of a competing auto manufacturer. A plan by subcontractors to request that general contractors begin paying interest on funds withheld to assure contract performance received an unfavorable review on the ground that such group action could restrain otherwise individual and independent contracts.

In November 1980, the Division issued a detailed guide explaining its approach to assessing the legality of research joint ventures. The guide, intended as a general statement of enforcement policy for use by business decision makers, lawyers, and others, contains a number of hypothetical cases designed to illuminate the most important or difficult issues, and also includes summaries of previous business review letters issued by the Division with respect to joint research.

## **Federal/State Relations**

Under the Crime Control Act of 1976, Congress appropriated \$4 million in fiscal 1980 for federal grants-in-aid to encourage state antitrust enforcement. Although the Antitrust Division completed awarding grants in fiscal 1980, dispensation of funds continued in 1981. The grants to individual states range in size from \$50,000 to \$195,000. Since 1977, more than \$24 million has been awarded under the Act to 45 states, Puerto Rico, and the District of Columbia. Results include the doubling of state antitrust personnel, antitrust cases, and investigations, as well as statutory improvements in state antitrust laws.

The Division further assisted state antitrust enforcement in fiscal 1981 by making investigative material available to state attorneys general. During the year, the Division responded to 50 requests for such material pursuant to Title III of the Hart-Scott-Rodino Act. The Division also participated in several cases involving the right of state attorneys general to obtain grand jury materials from the Division. At present, there is a split among the federal courts of appeals on this issue. Two circuits have accepted the Division's argument that, while a state attorney general does not have an absolute right to such materials, he can obtain them



without showing a particularized need for disclosure. One circuit, however, has held that disclosure does require such a showing. Several additional circuits are expected to address the issue in fiscal 1982.

## Management Initiatives

A number of significant management initiatives were undertaken in fiscal 1981 to improve Division efficiency. The Division's Antitrust Caseload Evaluation System (ACES) was expanded to include actual personnel costs and other expenditures by case and matter. This will permit Division management to monitor the use of Division resources in support of specific matters and to assure that expenditures reflect management priorities. The addition of cost data to the Division's case tracking records also permits development of benchmark figures (such as the average costs of a particular type of matter) that will serve as useful planning and budgeting tools.

The Division established procedures for systematically evaluating whether automated data processing support is needed for a particular case or matter. A request for automated litigation

support is now evaluated against standard criteria by a central Division management authority, which also weighs the competing needs of other Division activities.

To assure that sound economic advice is available to Division staff early in the development of each investigation, the Assistant Attorney General directed that an economist be assigned to each pre-merger notification received by the Division, and also to each new investigation unless the nature of the matter makes assignment of an economist unnecessary. Early involvement of economists in investigations will help the Division concentrate its resources on activities that promise the greatest benefit to consumers.

## CITATIONS

- (1) 101 S. Ct. 2415 (1981).
- (2) 101 S. Ct. 2061 (1981).
- (3) 1981-2 CCH Trade Cas. ¶64,302 (6th Cir. 1981).
- (4) 656 F.2d 428 (9th Cir. 1981).
- (5) 629 F.2d 1351 (5th Cir. 1980).
- (6) No. 81-6003 (2d Cir., Apr. 7, 1981), *aff'g* 507 F. Supp. 412 (S.D.N.Y. 1980).

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## Civil Division

### J. Paul McGrath Assistant Attorney General

The Civil Division has historically served as the government's lawyer, defending the integrity of Presidential initiatives and vital government programs. It has overall responsibility to represent effectively the interests of the government, its 98 plus departments and agencies and its officials through civil litigation. In cooperation with client agency attorneys and other parts of the Department, the Division sought to secure solutions to problems as wide-ranging as litigation arising from the Iranian hostage crisis to multibillion dollar product liability litigation resulting from the use of "Agent Orange" chemical herbicide.

The Division made significant progress during the year in reaching the goals set for it in the listing of Attorney General Priorities.

*1. Improvement of management support of complex litigation, including the development and adoption of a case tracking system and a personnel time record system.*

A new computer with a larger storage capacity and greater functional capabilities has enabled the Division to provide greater litigative and management support to its attorneys. A retrieval program has been developed for case status which will assist managers in case assignments, resource allocation and the design of effective litigation strategies. Plans have been developed to convert customs and appellate cases to the Civil Division's central case tracking system, and an automated calendar system was established to give attorneys due dates for upcoming case activities.

A time reporting system was developed to provide managers with reports on resource use, workload requirements and an assessment of caseload demands.

*2. Greater emphasis on coordinated criminal/civil prosecution of government fraud cases.*

Division personnel personally handle the majority of civil fraud cases which are instituted after reviewing investigative reports received from the Federal Bureau of Investigation and the Offices of Inspectors General in various departments. All supervisory personnel of the Commercial Litigation Branch screen incoming reports to assure that any reports with case potential are immediately assigned to staff attorneys. This has resulted in a substantial reduction in the referral backlog. Division staff also works closely with the Criminal Division, the U.S. Attorneys and client agencies in the effort to curtail white-collar crime through the Economic Crime Units and intensive educational programs.

In the past year, the Commercial Litigation Branch has continued to emphasize the recovery of money lost by the United

States as a result of fraud, corruption or other misconduct. Recent accomplishments in fraud cases include:

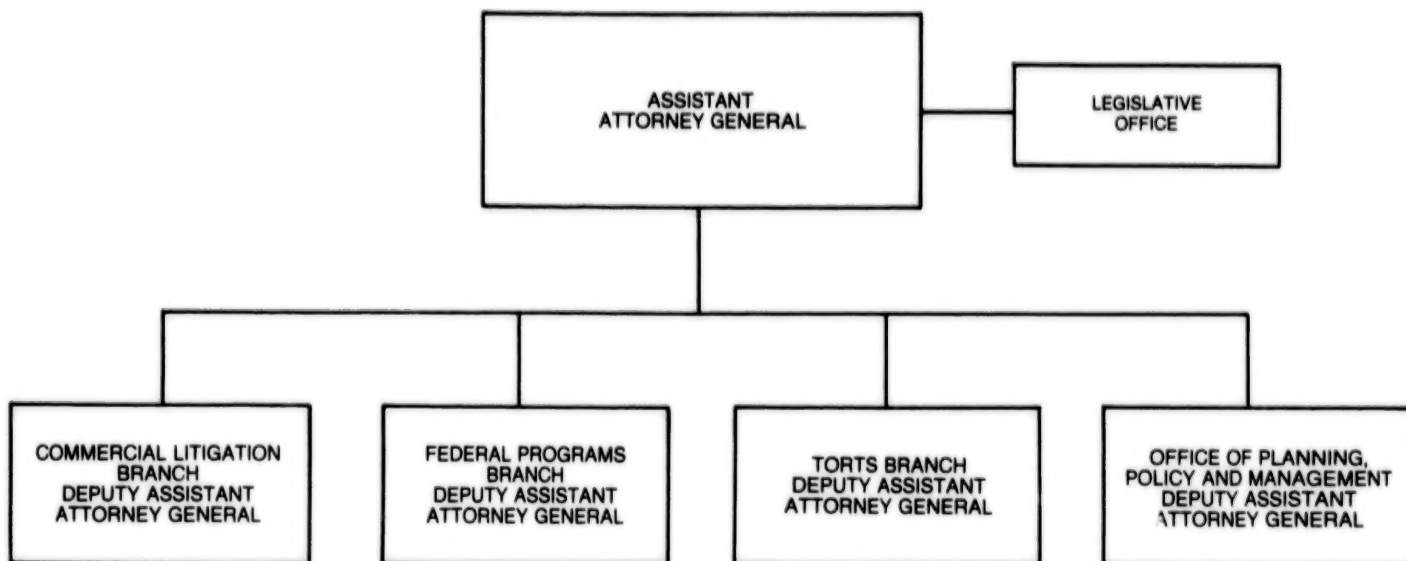
- a court decision which awarded damages to the government for fraudulent cotton subsidies, establishing a precedent for similar pending cases involving several million dollars;
- an affirmative fraud case brought against a Federal Housing Administration supervisor who illegally bought 40 homes and subsequently sold them at a profit;
- a suit against McDonnell Douglas for payment of a secret commission to Pakistani agents in connection with the sale of four DC-10 wide body jets partially financed by the Export Import Bank; and
- settlement, for over \$2 million, of suits against grain elevators for short weighing and misgrading grain (preceded by similar awards in earlier suits of approximately \$4 million).

*3. Continued improvement of client agency relations with agency counsel to facilitate pre-litigative counseling as the norm rather than the exception, and closer review of present or proposed memoranda of understanding in which litigation authority is shared with agency counsel.*

Recognizing the importance of productive working relationships with its many client agencies, the Civil Division has made a concerted effort to initiate and participate in meetings, seminars, discussions and conferences with them. Division attorneys have provided assistance to new Department of Health and Human Services attorneys; served on panels on ethics issues at the Attorney General Advocacy Institute; instructed at the Energy Litigation Institute; participated in panels on Freedom of Information Act and Privacy Act (FOIA/PA) issues; assisted General Counsels to the Inspectors General in drafting guidelines for subpoena issues; and attended a legal conference involving all agencies of the intelligence community. In addition, the Federal Programs Branch represented three employees of the Department of Labor during their testimony in executive sessions of the Permanent Subcommittee on Investigations of the Senate Committee on Governmental Affairs. These activities, among others, have had the net result of fostering positive and effective professional relations with the respective agencies.

The Division has implemented a computerized calendar reporting system for personally-handled cases. Printouts are available (weekly by attorney and reviewer and monthly by client agency) reflecting the upcoming scheduled activities by date, time, location, case attorney, reviewer, and client name. This new system also enables the Division to provide reliable data for budget plan-

## Civil Division



ning. It will serve as a useful client-relations tool by enabling the unit to provide client agencies with a list of all cases in which they are defendants and upcoming activities in those cases. The Division has also made a greater use of the computer to evaluate information used in discovery.

4. *Enhancement of the Division's capabilities in areas of emerging importance, including international law, transportation and railroad law, energy law, and Freedom of Information/Privacy law.*

### International Law

Eleven members of Congress filed an action challenging the President's decision to provide aid to El Salvador in *George Crocket v. Ronald Reagan*. The Division successfully defended this action.

In addition to defending the Iranian hostage release agreement and applicable executive orders, the Division over the last year and a half has been highly involved in the numerous and complex cases involving the freezing of Iranian assets, the required registration of Iranian students and Iranian demonstrations in the United States. The decision unit coordinated the more than 400 cases around the country concerning the Iranian assets. Subsequent to the hostage release agreement, the Division began filing documents seeking suspension of the more than 380 court cases involving Iranian assets that were still pending.

### Energy Law

The Division has successfully handled a wide range of energy-related cases and has been effective in ensuring compliance with the Department of Energy's (DOE) pricing regulations. In *Cit-*

*ronelle-Mobile Gathering v. DOE*, the court upheld the principle that the government was entitled to restitution to the Treasury of over \$13 million when individual consumers who were named could not be identified. The Division also was involved in "Global" Consent Orders, which the DOE believes resulted in significant savings to consumers by means of price rollbacks and refunds.

### Defensive Litigation

The Division successfully defeated a class action suit alleging that gasoline dealers and DOE had engaged in activities which resulted in a shortage of gasoline and increased gasoline prices. This unit also upheld the validity of a DOE regulation holding that oil production from new or recompleted wells on new leases is not "new oil" production exempt from price controls. Other important energy litigation:

- *Pacific Power and Light Co. v. Duncan*. The Division sustained the validity of DOE's authority to impose increased interim rates for power produced and sold by a government-owned project, allowing DOE to obtain a substantial increase in revenues from power sales.
- *State of Oklahoma, et al. v. Federal Energy Regulatory Commission*. The Division defended successfully the constitutionality of the Natural Gas Policy Act, which is intended to encourage natural gas conservation through higher prices.
- *Shimek v. DOE*. The Division was successful in defending the validity of a DOE regulation allowing refiners to determine the cost of gasoline by using a fixed-cost-per-gallon markup.



## Freedom of Information/Privacy Law

Increasingly important litigation has been generated by all the federal agencies under the FOIA. Defendants in the ABSCAM investigation attempted to force the release of Federal Bureau of Investigation videotapes under the FOIA. This Division successfully argued against release, citing an FOIA exemption. In *Gardels v. CIA*, the Division convinced the court to uphold the Central Intelligence Agency's defense that it would neither confirm nor deny the existence of the requested records because to do so would disclose exempt information.

## Commercial Litigation

This branch pursues the government's affirmative civil claims arising from official misconduct, fraud, bribery, and breach of contract. The branch is also responsible for the collection of money judgments and claims arising out of numerous government grant, loan and benefits programs. In addition, the branch defends contract actions brought against the government in state and federal district courts, as well as in the Court of Claims. The government's interests in foreclosures, bankruptcy proceedings, renegotiation cases, patent and copyright infringement suits and customs-related cases are also represented by the branch. The branch also includes an Office of Foreign Litigation, which coordinates representation of the interests of the United States in foreign proceedings as well as representing the government in domestic cases involving questions of international and foreign law.

In the past year, the Commercial Litigation Branch continued to emphasize the recovery of money lost by the United States as a result of fraud, corruption or other misconduct. Recent accomplishments in fraud cases include:

- a court decision which awarded damages to the government for fraudulent cotton subsidies, establishing a precedent for similar pending cases involving several million dollars;
- an affirmative fraud case brought against a Federal Housing Administration supervisor who illegally bought 40 homes and subsequently sold them at a profit;
- a suit against McDonnell Douglas for payment of a secret commission to Pakistani agents in connection with the sale of four DC-10 wide body jets partially financed by the Export Import Bank; and
- settlement, for more than \$2 million, of suits against grain elevators for short weighing and misgrading grain, which was preceded by similar awards in earlier suits of approximately \$4 million.

The branch was involved in a number of intellectual property cases. In *Decca, Ltd. v. U.S.*, a patent infringement suit concerning the world-wide Omega Navigation System, the court largely sustained the branch's exceptions to the trial judge's report, reducing the award from almost \$40 million to about \$3.1 million.

The branch was also involved in a suit to prohibit infringement of a Navy-owned patent on a bone-growth stimulator, the first suit brought under the new Government Patent Licensing Regulations. The branch was also involved in a multimillion dollar patent infringement suit relating to the Army's Dragon missile system (an infrared guided portable antitank missile) growing out of a government-sponsored contract that contained both the patent rights clause and the limited rights in data clause.

The Commercial Litigation Branch defended the United States against substantial claims brought in the Court of Claims. *Schwind v. OPM* challenged the Cost of Living Agreement computing methods outside the contiguous United States. The court ruled in favor of the government, saving an immediate \$15 million liability and a prospective cost of \$5 million per year. In *Space Research Corp. v. U.S.*, the court granted judgment on all counts for the government in the Federal Aviation Administration's cancellation of an intended procurement of 28 air traffic control training simulators which saved the United States \$2.2 million. The court ruled in favor of the United States and the Secretary of Agriculture in *Carruth v. U.S.*, which was a challenge to the Secretary's authority to withhold price supports from contaminated peanuts.

In the area of international trade, the branch has been directly responsible for *Zenith Radio Corp. v. U.S.* This is an important case, as the plaintiff has obtained a preliminary injunction against implementation of settlement agreements which provided that Zenith pay the United States \$77 million.

In the area of collections and judgment enforcement, the branch has the responsibility for supervising and coordinating several large collection programs. For example, it is this branch's responsibility to coordinate the collection efforts of over 50,000 defaulted student loans referred to the U.S. Attorneys' Offices. Due to the massive nature of this collection program and increasing Congressional and Office of Management and Budget interest in debt collection, the branch has attempted to coordinate referrals with the respective agency and the U.S. Attorneys' Offices in order to improve the collection program.

In other important judgment enforcement suits, the branch is seeking restitution of more than \$150,000 which unjustly enriched an affiliate of a bank at the Small Business Administration's expense; seeking damages totaling over \$400,000 for violations of the federal, state and common law, fraudulent conveyance statutes, and the corporate trust fund doctrine; and seeking collection of all profits and other financial advantages derived by Frank Snapp, a former Central Intelligence Agency agent, from the sales of his book, *Decent Interval*.

## Federal Programs Branch

This branch principally handles injunctive litigation by and against federal agencies, Cabinet officers, and other officials. Typically, the suits seek injunctions and declarations regarding

the lawfulness and operations of many government decisions and programs. The work of the branch includes enforcement litigation aimed at remedying statutory or regulatory violations, the defense of federal government employment policies and personnel actions, litigation relating to the disposition and availability of government records, and judicial review of agency decisions and injunctive and mandamus actions charging that statutes or regulations are invalid under the Constitution or federal laws. The branch also includes the Appellate Staff, which conducts appellate litigation for the entire Division.

In 1980 and the first half of 1981, the Federal Programs Branch handled an increasing variety of high priority litigation of international and national significance. In the first two months of the Reagan Administration, several actions taken by the new Administration were promptly challenged in the courts. The branch successfully defended the challenge to the President's retroactive hiring freeze, resulting in significant savings as well as preservation of the President's authority over federal hiring. Branch attorneys successfully defended the President's executive order lifting price and allocation controls on crude oil.

### **Iranian Cases**

The President's decision to honor the hostage release agreement with Iran led to several lawsuits seeking to overturn that agreement and applicable executive orders. In one case, the court agreed with the arguments of branch attorneys that the President had power under Act II of the Constitution and International Economic Emergency Powers Act to require American claimants to pursue their claims against Iran in an international tribunal. In another case, branch attorneys, on behalf of the United States, intervened in a suit seeking to upset the hostage release agreement. The court, in denying plaintiff's request for a temporary restraining order, held that plaintiff had no chance of success on the merits because of the very broad powers vested in the President to settle international claims.

In addition to defending the hostage release agreement and applicable executive orders, branch attorneys have been involved in the numerous and complex cases resulting from the freezing of Iranian assets, the required registration of Iranian students, and Iranian demonstrations in the United States. Branch attorneys coordinated the more than 400 cases around the country concerning the Iranian assets.

The 1980 census resulted in a number of lawsuits brought by cities and groups throughout the country which allege undercounts, improper management, unreasonable procedures and a violation of the "one person, one vote" principle. In the census cases successfully tried, branch attorneys have saved the government over \$34 million which would have been required to conduct new censuses in the respective cities and counties. In addition, they have saved the government \$100,000 in discovery costs by a multidistrict consolidation of census litigation.

In 1980, the branch's workload increased because of the establishment of draft registration. A number of suits challenged the

draft registration on the basis of sex and age discrimination, violation of registrants' right to privacy and as an invalid exercise of Congress war power.

In the area of energy litigation, branch attorneys have successfully handled a wide range of energy-related cases and have been effective in ensuring compliance with DOE's pricing regulations. In one case, the court upheld the principle that the government was entitled to restitution to the Treasury of over \$13 million when individual consumers who were named could not be identified.

In defensive litigation, branch attorneys successfully defeated a class action suit alleging that gasoline dealers and DOE had engaged in activities which resulted in a shortage of gasoline and increased gasoline prices. They also upheld the validity of a DOE regulation holding that oil production from new or recompleted wells on new leases is not "new oil" production exempt from price controls.

### **FOIA**

Increasingly important litigation has been generated by all the federal agencies under the FOIA. Defendants in the ABSCAM investigation attempted to secure the release of Federal Bureau of Investigation videotapes under the FOIA. Federal Programs Branch attorneys successfully argued, under an FOIA exemption, against release. In another case, branch attorneys convinced the court to uphold the Central Intelligence Agency's defense that it would neither confirm nor deny the existence of the requested records because to do so would disclose exempt information.

The Federal Programs Branch handled a number of cases involving health and social programs. One important case was brought by coal operators who contended that the government has improperly administered the black lung benefits program. The court dismissed the case and, in doing so, established an important precedent that broad challenges to the administration of government programs are not subject to judicial review. Another health case which challenged the legality of the Department of Agriculture "junk foods" regulations was dismissed by the court, thus preserving the integrity of an important federal program.

In 1980, the branch was successful in handling a number of cases defending the Department of Housing and Urban Development (HUD). In one case, the court ruled in favor of the government and found no cause of action in a charge that a low-income subsidized housing project in a middle-income neighborhood would increase the tax base because of increased student enrollment. In other actions, branch attorneys won a case that claimed that HUD activities contributed to racial segregation, a suit that challenged HUD's and the Veterans Administration's appraisal techniques, a challenge to HUD's implementation of the Solar Heating and Cooling Demonstration Act, and a challenge to HUD's authority to order federally assisted housing projects to lower rents in the wake of Proposition 13 savings.

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## National Security

In the area of national security, branch attorneys handled cases on both the district court and appellate level. One case involved a contractor who sued the Navy for not renewing several contracts for highly classified Navy projects. In a decision significant to the defense of national security issues, the U.S. Court of Appeals established a new principle that courts should dismiss a case if there is a possibility that highly classified information could be inadvertently disclosed during litigation.

The Federal Programs Branch has experienced considerable activity in employment areas. Considerable public attention has been focused on the government's PACE test for hiring many professional and administrative employees. In a case challenging the validity of PACE, branch attorneys reached a consent decree with the plaintiffs. It featured phased elimination of PACE over the next three years and replacement by an exam more closely tailored to the 118 PACE occupations, as well as use of "all practicable efforts" to bring more qualified blacks and Hispanics into the federal government. Other substantive employment cases under the responsibility of this branch have dealt with challenges to Senior Executive Service regulations, saving the government \$5 million, a back-pay liability case which saved the government \$5-\$7 million, and cases involving the Merit Systems Protection Board and removal of an administrative law judge.

Federal Programs Branch attorneys have taken the initiative in a number of affirmative cases which clearly benefit the government and/or consumers. In several energy price overcharge cases, branch attorneys were successful in winning \$1,050,000 in civil penalties and \$6.57 million in restitution.

In 1980, the branch established a number of management initiatives for the purpose of improving the utilization of branch resources. These initiatives have improved the administration, organization, information and case expedition within the branch.

## "Significant Case" System

The "Significant Case" System is an innovation which designates cases of unusual importance or sensitivity as "significant" and therefore subject to a number of special procedures. When so designated, a case is directly handled by Federal Programs Branch attorneys and reviewed by a branch director. Agency representatives are invited to attend all moot courts and are supplied with drafts of pleadings. Where a novel issue of law or unresolved policy determination is identified, the Solicitor General's office or the Office of Legal Counsel are consulted. The status of cases is reviewed at least once a month by branch directors and a memorandum is submitted to the Assistant Attorney General. The "Significant Case" System keeps branch directors, the Deputy Assistant Attorney General and the Assistant Attorney General informed of developments in significant cases and able to participate more effectively in tactical and legal decisionmaking.

It also has promoted a close working relationship with agencies involved.

The branch has implemented a computerized calendar reporting system for personally-handled cases. Printouts are available (weekly by attorney and reviewer and monthly by client agency) reflecting the upcoming scheduled activities by date, time, location, case attorney, reviewer, and client name. In addition to providing each attorney and reviewer with a separate calendaring system to assist in the organization of work schedules, this new system also enables the branch to provide reliable data for budget planning. It will serve as a useful client relations tool by enabling the unit to provide client agencies with a list of all cases in which they are defendants and upcoming activities in those cases. This system also achieves some consolidation of travel by highlighting where contemporaneous litigation activities are occurring. The branch has also made a greater use of the computer to evaluate information used in discovery.

Recognizing the importance of productive working relationships with its many client agencies, this branch has made a concerted effort to initiate and participate in meetings, seminars, discussions and conferences with them. Branch attorneys have provided assistance to new Department of Health and Human Services (HHS) attorneys; served on panels on ethics issues at the Attorney General's Advocacy Institute; instructed at the Energy Litigation Institute; participated in panels on FOIA/PA issues; assisted General Counsels to the Inspector General in drafting guidelines for subpoena issues; and attended a legal conference involving all agencies of the intelligence community. In addition, the Federal Programs Branch represented three employees of the Department of Labor during their testimony in executive sessions of the subcommittee on special investigations of the Senate Committee on Government Affairs. These client agency activities, among others, have had the net result of fostering positive and effective professional relations with the respective agencies.

## Appellate Staff

The mission of the Appellate Staff is to protect the interests of the United States by successfully defending appeals which seek reversal of lower court and agency decisions favorable to the government, securing the reversal of lower court or agency decisions against the government, and preparing documents for filing on civil matters in the Supreme Court.

The Appellate Staff achieved many successes in the courts during the past year. Some of the more noteworthy results are summarized below:

## Census Litigation

A number of cities filed actions challenging the conduct of 1980 Decennial Census; the primary challenges were mounted by New York, Detroit and Philadelphia. All three cases sought an



injunction against the reporting of statewide figures to the President by December 31, 1980 (for apportionment of representatives among the states) and of sub-state figures by April 1, 1981 (for use by the states for redistributing purposes). Appellate Staff attorneys obtained stays from the Supreme Court of injunctions issued in the New York and Detroit cases and successfully resisted Philadelphia's request for interim injunctive relief. As a result of these efforts, most of which were carried out on an emergency basis just before the December 31 census deadline, the Census Bureau was able to report census tabulations on time. These cases are now proceeding on the merits in the courts of appeals.

In another census case, a challenge was initiated by a nationwide organization to the Census Bureau's announced intention to count illegal aliens in the 1980 census. The D.C. Circuit accepted the Appellate Staff's arguments and affirmed the district court's dismissal of the action for lack of standing. The Supreme Court later denied *certiorari*. In a third case, Appellate Staff attorneys persuaded the Tenth Circuit to hold, in conflict with the Third Circuit, that Census Bureau address lists are absolutely privileged from discovery. The nature of the privilege which attaches to census data will be before the Supreme Court next term for final resolution. The court granted a petition for *certiorari* in the Third Circuit case.

### Supreme Court Cases

In one case, the Second Circuit stopped HHS from denying Social Security benefits based on claimant's failure to submit a written application in circumstances where claimant relied on HHS misinformation in failing to file, and where HHS internal claims manual requires employees to solicit written applications in all circumstances. In a *certiorari* petition, the Appellate Staff attorneys argued that the Second Circuit decision conflicted with the rule of *FCIC v. Merrill* that the estoppel doctrine does not apply against the government. In a *per curiam* opinion, the Supreme Court reversed on the strength of the *certiorari* petition. The Court agreed that the decision below was inconsistent with *Merrill*, and further agreed that the government was not guilty of "affirmative misconduct," which, the Court has suggested in dicta on past occasions, could possibly justify application of the estoppel doctrine.

In another HHS case, the Supreme Court held that neither the federal government nor the states must fund abortions for indigent women. Initially, the Court held that the Medicaid statute does not impose any unilateral funding obligations upon the states. The Court then held that funding restrictions do not impinge upon the constitutional right to privacy. The Court reiterated its view that the government has no obligation to subsidize constitutionally protected choices.

Acting on a jurisdictional statement prepared by the Appellate Staff, the Supreme Court summarily reversed a decision of the District Court of Puerto Rico that declared 42 U.S. Code 1308 and 1396(b) unconstitutional as violating the equal protection

component of the Fifth Amendment. Those statutes provide a lower level of federal reimbursement under the program of Aid to Families with Dependent Children to Puerto Rico (and to Guam and the Virgin Islands) than that provided to the states. The Court's decision, which confirms Congress power to draw rational distinctions between states and territories, has wide implications in the area of legislative programs affecting the territories.

In July 1980, a three-judge district court in Philadelphia declared unconstitutional the provision of the Military Selective Service Act limiting registration to males, and effectively barred the President from going forward with the two-week registration scheduled to begin July 21. Appellate Staff attorneys had prepared anticipatory stay papers during the preceding week in cooperation with the Solicitor General's office. The government's stay application was, accordingly, promptly filed shortly after the district court acted. Justice Brennan granted the stay application. As a result of the stay order, registration proceeded as scheduled on July 21. The case was thereafter briefed on the merits.

### Court of Appeals

In a major standing decision, the D.C. Circuit held that Control Data Corporation lacked standing under the "zone of interest" limitation to challenge the government's own specifications for any computer equipment that it may purchase. As a result of this decision the government will save \$61 million in the next five years alone, and the precedent should save hundreds of millions of dollars by barring similar future litigation.

In a \$13 million suit arising out of the 1976 Teton Dam disaster, the Ninth Circuit reversed a lower court ruling and held that the Flood Control Act immunized the government from liability. The Supreme Court later denied *certiorari*. The result achieved in this case not only saved the government a vast sum of money in litigation but also provided an important precedent for future tort claims arising out of floods.

In another case, the court of appeals had originally ruled that oral hearings were required in all disputed Medicare cases where the amount in controversy was less than \$100. Since that ruling threatened to saddle HHS annually with thousands of hearings which would cost more than the value of the claims, the Appellate Staff took the case over at the rehearing stage. In its opinion issued on rehearing, the panel changed its mind and eliminated the requirement for an oral hearing for the great majority of small claims cases, and remanded the case to the district court to permit HHS to formulate more adequate notice provisions.

One highly publicized case involved a Library of Congress employee who engaged in an elaborate masquerade as a law student, applicant for the bar, and then as a lawyer in order to obtain and keep a job where specific qualifications called for a lawyer. Unmasked and his deception exposed, he was discharged. He then brought a Title VII suit alleging that he was fired in retaliation for his efforts to expose racial discrimination at the Library. On the Appellate Staff attorneys' appeal, the D.C. Circuit reversed

the district court's decision that there was a Title VII violation. This decision will likely serve as precedent for other Title VII retaliation cases.

The Federal Water Pollution Control Act allows the United States to recover costs expended by the government in cleaning up oil spills from vessels which discharge the oil. No negligence need be shown; the vessels are strictly liable for the amounts expended in the cleanup operation. The United States brought suit against the barge Shamrock for \$462,000 expended by the United States in cleaning up oil discharged by the vessel into the Patapsco River. The suit was filed three years and 27 days after the oil spill. The district court ruled that the limitations period for tort actions (three years) applied to this action and ruled that the United States was therefore time barred. On appeal, Appellate Staff attorneys argued that the government's cause of action did not accrue on the date of the spill, but at a later date when cleanup operations were completed. The Fourth Circuit agreed with the contention that the latter date was the date on which our cause of action accrued.

## Torts

This branch represents the interests of the United States, its officers and agents in suits seeking money damages for negligent or wrongful acts of government employees. The branch also prosecutes affirmative torts claims on behalf of the United States.

In fiscal 1980, the Torts Branch handled an ever-widening range of litigation. Its docket now encompasses not only traditional problems in torts law, such as medical malpractice and aircraft accidents, but also novel developments such as personal injury, radiation litigation and the rapidly expanding areas of regulatory torts. Through reorganization, improved case management techniques and the growing use of computer support aids, the branch has been able to meet the challenge of large-scale lawsuits through more efficient use of litigation resources.

## Team Case Approach

The Torts Branch has initiated many new case management techniques that have resulted in a more efficient handling of its workload. Specifically, the implementation of the team case approach for certain cases provides team attorneys with the ability to assist or substitute for the assigned trial attorney in any aspect of the case when there is a schedule conflict or workload increase. The team case technique also provides a training system for attorneys who are not experienced in the handling of certain cases. The branch has developed a case standardization system, an automated calendaring report system, and a settlement Review Committee whose purpose is to obtain quality information and collegial input before any initial decisions or compromise memoranda are prepared. This branch also holds moot court prior to important cases for the purpose of refining and improving the attorney's case strategy.

The Torts Branch recognizes the importance of regular communication with its client agencies to ensure productive working relationships, uniformity of litigation direction, professional exchange and education in recent court decisions important to the unit and respective agencies. The branch has thus initiated a number of meetings, lectures, symposia, seminars and other forms of interactions with its client agencies. These activities cover a wide range of tort-related issues. Moreover, besides sponsoring such meetings, branch attorneys serve on interagency study groups, meet regularly with U.S. Attorneys and participate in agency-sponsored conferences. A means of further improving the quality of expert assistance is a program whereby agencies detail members to the Torts Branch, where they receive intense exposure to the litigative process. As a result of this program, the quality of expert assistance that the client is able to give the branch attorneys is enhanced by a firsthand knowledge of the litigator's role.

## Swine Flu Cases

The branch has continued to handle more than 1,400 suits arising out of the Swine Flu Immunization program which seek over \$2.8 million. Of these cases, 143 have been settled, 206 have been dismissed, five have resulted in judgments for the plaintiffs, and 26 have culminated in judgments for the government by the end of 1980. Although the multidistrict proceedings on the Swine Flu litigation have been concluded, the litigation is proceeding in the various districts.

During 1980, branch attorneys were successful in handling a number of medical malpractice suits, including the successful defense of two major medical malpractice suits against the government. More than \$12 billion in damages is being sought against the government in medical malpractice litigation.

There has been a substantial increase in cases about the potential hazards of asbestos, radiation and harmful chemicals. A number of these cases, amounting to \$40 billion in damages, have been filed by servicemen who were exposed to the herbicide "Agent Orange."

Branch attorneys successfully convinced the court that the government's immunity from tort claims for injuries sustained incident to or arising out of military service precluded the chemical manufacturer's claims for contribution or indemnity.

## Regulatory Torts

Defending the United States in regulatory tort suits has become a significant part of Torts Branch's litigation. In these cases, plaintiffs seek compensation for injuries stemming from federal regulatory agencies' alleged failure to carry out properly their inspection, examination, and enforcement responsibilities. In recent years, suits have been based on such diverse regulatory functions as the Occupational Safety and Health Administration's safety and health regulation, mine safety, food and drug laws and consumer protection activities.

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The Torts Branch has become increasingly responsible for "Bivens" type litigation whereby a government employee is sued for some action performed while serving in his or her official position. In 1980, a case was won by the United States which sought compensatory and punitive damages from former Attorney General Griffin Bell and Federal Bureau of Investigation officials for authorizing and conducting a foreign security electronic surveillance. The plaintiffs sought depositions from high federal officials and access to classified material. This was successfully resisted and summary judgment was granted on the grounds of qualified immunity.

Torts Branch attorneys continue to represent the United States in a number of aviation accidents. Of particular importance is the decision on the air crash disaster of Pago Pago in 1974. The court found that there was no negligence on the part of the Federal Aviation Administration, the National Weather Service or the Government of American Samoa. The opinion is significant in that the court set down several important concepts regarding pilot obligation and airline crew negligence that will be of substantial assistance in future cases. The success of this case for the government meant a savings of over \$10 million.

The branch has the responsibility for maritime litigation. In 1980, branch attorneys successfully defended seaman personal injury suits, handled the bankruptcy of Pacific Far East Lines, and defended the Coast Guard in suits involving navigation aids. In addition, the branch is becoming increasingly involved in litigation to recover oil spill cleanup costs.

## **Office of Planning, Policy and Management**

Working in close conjunction with the Assistant Attorney General, the staff and the litigating branches, the Office of Planning,

Policy and Management has made significant progress in the development and implementation of management improvements and initiatives.

This office has continued the refinement of organizational changes made in 1978, and 1979 and 1980, including researching and implementing alternatives to the present mode of handling and assigning cases in light of the budgetary restraints on personnel and travel funds.

The office has directed the establishment of financial management systems to ensure allocation of funds to priority activities. Its expansion of automated case management information systems has provided directors of litigation with reports to manage and anticipate workload. It has continued the development of personnel systems in accordance with the Civil Service Reform Act, such as Merit Pay and Senior Executive Service, and improved administrative services (property and supply control, document processing and distribution services) and enhancements in the work environment and space use.

To improve the timeliness of response and the adequacy of information provided, the efforts in 1980 and 1981 included development of a selective retrieval program. Information concerning prior and pending legislation may be immediately obtained from automated word processing equipment, resulting in a substantial savings in attorney research hours. Also established was a response program for noncase-related Congressional inquiries which partially alleviates attorneys' Congressional inquiry workload and a Congressional response tracking system which decreased the number of outstanding responses by 64 percent. The office also upgraded its capability to provide timely and relevant responses to 5,544 inquiries from Congress and the public, White House referrals and preliminary responses to FOIA/PA requests.



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## Civil Rights Division

### William Bradford Reynolds Assistant Attorney General

The Civil Rights Division was established in 1957 following enactment of the first civil rights statute since Reconstruction. The Division is staffed by 162 attorneys and 221 support personnel organized into seven major enforcement sections and one office.

The Division enforces the Civil Rights Acts of 1957, 1960, 1964, and 1968; the Voting Rights Act of 1965, as amended in 1970 and 1975; the Equal Credit Opportunity Act; and civil rights provisions in numerous other statutes. These laws prohibit discrimination in education, employment, credit, housing, public accommodations and facilities, voting, and certain federally funded and conducted programs. The Division also now enforces the Civil Rights of Institutionalized Persons Act of 1980, which authorizes the Attorney General to sue to redress systemic deprivations of constitutional and federal statutory rights of persons confined in state and locally operated institutions.

In addition, the Division prosecutes actions under several criminal civil rights statutes, coordinates the civil rights enforcement efforts of the federal agencies whose programs are covered by Titles VI and IX of the 1964 Act, and Section 504 of the Rehabilitation Act of 1973, as amended, and assists federal agencies in identifying and eliminating sexually discriminatory provisions in their policies and programs.

Six of the sections have jurisdiction over particular subject areas and the related statutes. The seventh handles legal counseling and appellate matters. Complex, massive, or sensitive cases that cannot be undertaken by the sections are handled by Special Counsel for Litigation.

During the year, the Division filed 23 civil suits, brought 41 criminal actions against 78 defendants, participated in 25 other new suits, and reviewed 2,001 submissions under Section 5 of the Voting Rights Act. At the end of the year, the Division had approximately 2,300 cases and matters under its supervision.

### Appellate Section

The Appellate Section is primarily responsible for all Division cases in the Supreme Court and the courts of appeals, for legislative matters, and for provision of legal counsel. The section's litigation includes participation as a party and as *amicus curiae*.

During the year, the Supreme Court decided seven Division cases on the merits. In six of these, the decisions were in accord with the Division's position. Courts of appeals decided 44 Division cases on merits during the same period. Of those, 34 substantially supported the Division's position.

There were three significant Supreme Court decisions in cases involving employment discrimination under the federal statutes. The first held that a district court may not prohibit plaintiffs and attorneys in a Title VII class action suit from communicating with potential class members without prior court approval;<sup>1</sup> the second held that Title VII extends to women the same protection against discrimination in compensation as it does to other protected groups;<sup>2</sup> and the third held that a district court denial of a joint motion to enter a consent decree containing injunctive relief is appealable.<sup>3</sup> In other cases heard before the Court, the Court held that a reapportionment plan devised in the course of litigation requires preclearance under Section 5 of the Voting Rights Act;<sup>4</sup> and, contrary to the views of the United States, that one part of the Developmentally Disabled Assistance and Bill of Rights Act does not impose an obligation on a state to provide appropriate habilitative treatment in the least restrictive environment.<sup>5</sup>

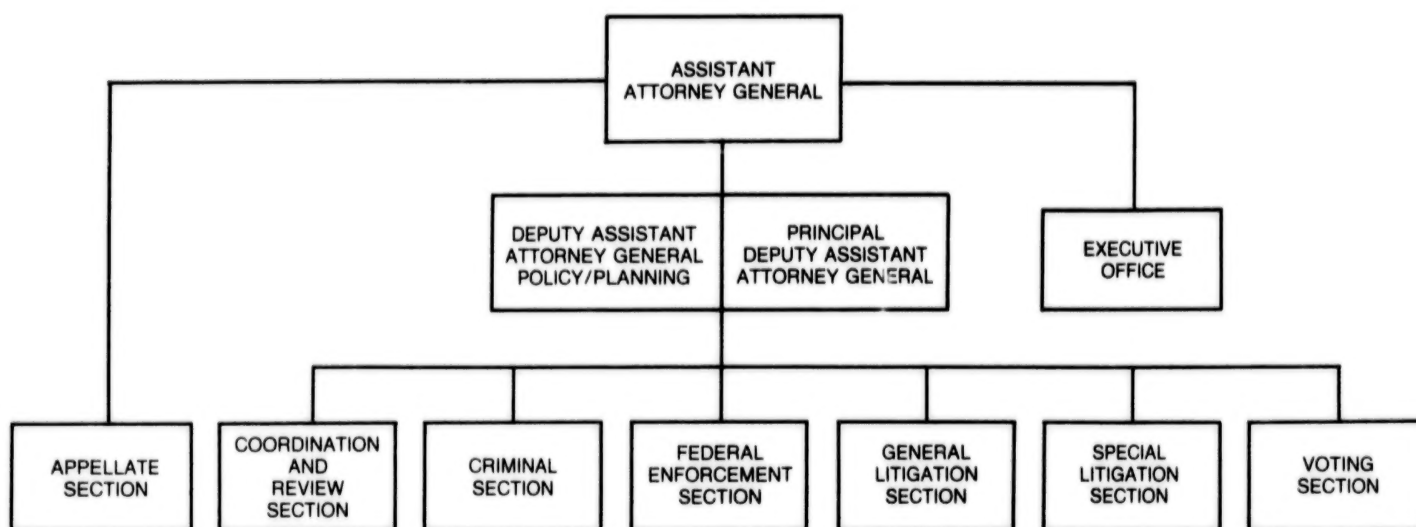
Appellate level findings concerning discrimination in education and voting were among the important decisions rendered by federal circuit courts of appeals. On the issue of education, the Fourth Circuit held that the Reconstruction statutes prohibit discrimination on the basis of race by a private, sectarian educational institution, and that the invocation of the free exercise doctrine is inadequate to justify such discrimination, absent a demonstration that the action is based on church belief rather than personal religious preference.<sup>6</sup> The Fifth Circuit held that the exclusion of illegal alien children from free public education in Texas violates the equal protection clause of the Fourteenth Amendment,<sup>7</sup> and, in another case, that an apparently neutral at-large election scheme maintained for the purpose of diluting the black vote violates the Constitution and federal statutes.<sup>8</sup>

During the year, the Division provided legal counsel to federal agencies and other divisions within the Department on pending cases, and provided advice respecting the promulgation and revision of federal regulations which affect the civil rights of minorities and women. In addition, the Division commented on numerous legislative proposals during the 97th Congress, and prepared, for ultimate submission to the President, a report on the experience of the Department in the enforcement of the Voting Rights Act, the extension of which is pending in Congress.

### Coordination and Review Section

The Office of Coordination and Review was converted to section status during the year to meet the Department's expanded responsibilities under Executive Order 12250. Under Executive

## Civil Rights Division



Order 12250 (November 2, 1980), the section coordinates the implementation and enforcement by the Executive Branch of federal laws that prohibit discrimination in federally-assisted programs on the basis of race, color, national origin, sex, handicap, and religion, and in federally-conducted programs on the basis of handicap. This year, the section concentrated on Title VI of the Civil Rights Act of 1964 (race, color, national origin), Title IX of the Education Amendments of 1972 (sex), and Section 504 of the Rehabilitation Act of 1973 (handicap).

As required by the Executive Order, the section developed and submitted to the Office of Management and Budget (OMB) a plan for the implementation of Executive Order 12250 during the next three years. The plan serves not only as a planning, management, and budget document for the section but also as a model for other agencies to follow in developing their own implementation plans. With agency participation, the section developed a draft guideline, which includes a proposed format, for agency implementation plans. These plans will define the goals, objectives, and milestones of covered agencies, and will enable the section to provide information to each agency on its productivity and effectiveness in comparison to other agencies with similar mandates.

Under Executive Order 12250, the section is responsible for ensuring that the covered civil rights rules and regulations of federal agencies are consistent with each other and are legally sufficient interpretations of their enabling statutes. During the year, the section's legal staff reviewed 35 regulations—with emphasis on facilitating the regulation development process for those agencies that had not yet published Section 504 regulations in final form. The section approved the Section 504 regulations of three agencies and provided extensive assistance to the Departments of Housing and Urban Development (HUD), Agriculture, Interior,

Defense, and Commerce, and the Civil Aeronautics Board, Environmental Protection Agency, Equal Employment Opportunity Commission, and General Services Administration on their final Section 504 regulations.

The section assisted the Civil Division in *Paralyzed Veterans of America v. Smith*, No. 79-1979 (C.D. Cal., filed May 30, 1979), and *Williams v. United States*, No. 80-5368 (C.D. Cal., filed December 2, 1980), two suits that sought to have the Department and other agencies complete the Section 504 regulation development process.

Executive Order 12250 transferred to the Department of Justice the administration of the guidelines for nondiscrimination on the basis of handicap that were originally issued by the Department of Health, Education, and Welfare under Executive Order 11914. In carrying out its assigned responsibilities, the section initiated a review of these guidelines by surveying all federal agencies empowered to develop Section 504 regulations and sought suggested revisions. The section has analyzed the comments and is in the process of revising the guidelines. The revisions are part of the development of a comprehensive coordinated regulation for all statutes which prohibit discrimination on the basis of race, color, national origin, and sex in federally assisted programs. The revisions will also include procedural as well as substantive guidance and will replace the existing Department of Justice coordination regulation enforcement procedures under Title VI. On August 11, during this review process, the section suspended application of the existing 504 guidelines as they apply to mass transportation, enabling the Department of Transportation to amend its Section 504 regulation, thereby reducing burdens on public transit systems.

The section began developing guidelines for implementation of the 1978 Amendments to Section 504, which prohibit discrimi-

nation on the basis of handicap in federally-conducted programs.

The section assisted the Presidential Task Force on Regulatory Relief in its review of the cost-effectiveness of Section 504 as interpreted by federal regulation. The section also worked with the Task Force and OMB to develop procedures for resolving the areas of overlap between Executive Order 12250 and other anti-discrimination executive orders. Executive Order 12291, signed by President Reagan on February 17, 1981, requires agencies to consider the costs and benefits of major regulations and provides for OMB review.

In addition to reviewing regulations, the section provides legal assistance to federal agencies on complex, unusual, or precedent-setting cases or issues that arise during agency implementation of civil rights statutes.

The section is also preparing a final report of the Task Force on Sex Discrimination, which was merged into the Office of Coordination and Review.

The staff participated in an OMB Task Force to revise Section 53 of OMB Circular A-11, the principal source of data on the federal government's efforts to enforce civil rights laws. Reporting schedules were refined to allow more cost-effective analyses and more valid data submissions by the covered agencies. The staff provided the principal instruction at workshops for more than 100 persons from 36 departments and agencies.

During the year, the staff monitored implementation of corrective action recommendations contained in Interagency Survey Reviews completed during the previous fiscal year involving the Farmer's Home Administration, the Small Business Administration, the Science and Education Administration Extension of the Department of Agriculture.

## Criminal Section

The Criminal Section enforces statutes designed to preserve personal liberties. Two of these laws, passed during Reconstruction, prohibit persons from acting under color of law or in conspiracy with others to interfere with an individual's federally protected rights. Other statutes prohibit holding individuals in peonage or involuntary servitude. The section is also responsible for enforcement of the provisions of the 1968 Civil Rights Act which prohibit the use of force or threats of force to injure or intimidate any person involved in the exercise of certain federal rights and activities.

During the year, the section reviewed 11,064 complaints alleging criminal interference with civil rights. More than 3,390 of these complaints were investigated by the Federal Bureau of Investigation. The results of 62 investigations were presented to federal grand juries, and 36 indictments were returned and five informations were filed charging a total of 78 defendants—including 56 law enforcement officers.

Thirty-one cases were tried, resulting in 31 convictions and 17 acquittals. Mistrials were declared in two cases because the juries

were unable to render verdicts. In addition, 18 defendants pled guilty to violations of criminal civil rights statutes. Charges were dismissed against nine other persons.

Investigations into complaints alleging summary punishment by law enforcement officials continued to account for much of the section's activity. Of the 41 cases filed, 34 involved possible violations of 18 U.S. Code 242 (deprivation of rights under color of law) or Section 241 (conspiracy against rights of citizens). Twenty-one of the 31 cases tried involved alleged violations by police or other law enforcement officials.

Significant cases include the indictment of five Immigration and Naturalization Service officers for beating and abusing Cuban refugees at Ft. Chaffee, Arkansas,<sup>9</sup> and the indictment of seven New Orleans police officers who allegedly beat and coerced statements from witnesses during the investigation of the murder of a police officer.<sup>10</sup> (This indictment was dismissed by the district court; however, an appeal is anticipated.) In Bridgeport, Connecticut, a police officer was indicted in the fatal shooting of a 16-year-old victim.<sup>11</sup> This defendant is also charged with perjury. Another significant matter involved the prosecution of six white guards at the Stateville Correctional Center in Joliet, Illinois,<sup>12</sup> who were alleged to have beaten three black inmates after taking them one by one into a shower. One defendant tendered a guilty plea and testified at the trial which resulted in the conviction of the five other defendants.

Due to increased Ku Klux Klan activity around the country, the section continued the vigorous prosecution of Klan members for violations of federal civil rights statutes. Joseph Paul Franklin was convicted of fatally shooting two black men who were jogging with two white women near a municipal park in Salt Lake City.<sup>13</sup> Four Klan members in Detroit pled guilty to conspiracy charges for making shotgun attacks upon a black victim and for racial harassment and threats against a black family living in a white neighborhood.<sup>14</sup> In other Klan related matters, three defendants pled guilty and a fourth defendant was convicted for acting to prevent a black male and his white wife from enjoying their rights to interstate travel between Tennessee and Alabama.<sup>15</sup> A Massachusetts woman pled guilty to charges of attempting to intimidate a black family living in her neighborhood.<sup>16</sup> An information was filed against a juvenile defendant in Pennsylvania for burning a wooden cross on a black family's lawn.<sup>17</sup>

The section continued to enforce the involuntary servitude and peonage statutes to protect the rights of migrant workers and other minorities. An official of the Church of God and True Holiness in Durham, North Carolina, was convicted for holding eight teenagers in a condition of involuntary servitude and was sentenced to 20 years in prison.<sup>18</sup>

## Federal Enforcement Section

The Federal Enforcement Section focuses its litigation and investigations in three primary areas: 1) enforcement of provisions



of federal law that prohibit discriminatory employment practices by state and local governments and require equal employment opportunity by federal contractors and subcontractors; 2) enforcement of provisions of law that prohibit discrimination in programs or activities—other than housing and education—receiving federal financial assistance; and 3) the defense of and intervention in lawsuits related to these areas.

## Equal Employment Opportunity

Litigation activity involving enforcement of equal employment opportunity laws during the year included the filing of 11 affirmative systemic (pattern or practice) suits against public employers and federal contractors, and 19 consent decrees were obtained. The consent decrees included one with the Los Angeles Police Department, one of the five largest departments in the country, with 7,300 employees. The decree requires: 1) reformation of the city's hiring practices to provide opportunities to blacks, Hispanics, and women; 2) the city to allot up to \$2 million for back pay and other relief for those groups adversely affected by the written examination, physical agility test, and minimum height standard.<sup>19</sup> Other consent decrees obtained included: an award of \$300,000 of back pay and prospective relief in Jefferson County, Alabama, in a decree involving the Personnel Board and the City of Birmingham;<sup>20</sup> and a consent decree providing \$300,000 in back pay and prospective relief from the City of Farmington, New Mexico.<sup>21</sup> In this latter case, the major allegation concerned employment practices that discriminated against Indians.

While a consent decree resolved most of the prospective relief in a case against the North Carolina State Police, the court held after trial that a minimum height requirement discriminated against women seeking to become state troopers.<sup>22</sup> The government also prevailed in a second trial held in *United States v. Fairfax County, Virginia* after both sides had taken an appeal from the district court's order in the first trial in 1979 involving employment practices on a county-wide basis. The government obtained prospective relief and is now proceeding to notify those of the 10,000 black and female applicants in the county since 1977 who may be eligible for back pay, retroactive seniority, or other relief.<sup>23</sup> A third trial involved allegations of practices that discriminate on grounds of race, sex, and national origin by the largest agency of the State of Texas, the State Department of Highways and Public Transportation.<sup>24</sup>

The section was active, too, in defending the Departments of Labor and Transportation in 20 lawsuits. Fourteen of the lawsuits were brought by various state contractor associations or companies seeking to enjoin the application of minority business enterprise regulations in the contract awarding of federal funds. The government was successful after trial in one of the suits and the majority of the remainder are continued pending the promulgation of new Department of Transportation regulations.

## Services Discrimination

Substantial resources were expended on the development of "services cases" during the past year, resulting in the filing of a lawsuit and consent decree in Troup, Texas, involving denial of equal municipal services to its minority population.<sup>25</sup> A partial consent decree was entered which released federal grant money to the Lummi Indians in the State of Washington for the building of a sewer. A trial was held in Roberts County, South Dakota, concerning the refusal of the sheriff to deputize police of the Indian tribe there to enforce the law on Indian lands when violated by non-Indians.

## General Litigation Section

The General Litigation Section was established in April 1979, through a merger of the Education and Housing and Credit Sections. The section enforces the federal laws designed to ensure nondiscrimination in public elementary and secondary schools and colleges; the Fair Housing Act of 1968, which outlaws discrimination in residential housing; and the Equal Credit Opportunity Act, which forbids discrimination in all aspects of credit transactions.

## Education

During the year, an agreement was reached with the State of Louisiana in a seven-year-old suit seeking to desegregate the state system of higher education,<sup>26</sup> and a proposed consent decree was submitted to the court. Discovery and negotiations are being continued in a similar suit seeking desegregation of the state higher education system in Mississippi.<sup>27</sup>

A large portion of the section's efforts in the area of desegregation of elementary and secondary school systems focused on northern school systems. Final desegregation orders were entered in cases involving public schools in the metropolitan areas of Indianapolis,<sup>28</sup> South Bend, Indiana,<sup>29</sup> St. Louis,<sup>30</sup> and Ferndale, Michigan.<sup>31</sup> Efforts were continued to obtain desegregation in Chicago,<sup>32</sup> and Kansas City, Kansas,<sup>33</sup> and enforcement and monitoring of desegregation in Cleveland<sup>34</sup> was ongoing. In addition, new suits were initiated seeking to desegregate schools in Yonkers, New York,<sup>35</sup> and Lima, Ohio.<sup>36</sup> The Yonkers complaint alleged discrimination in the location of public and subsidized housing as well as in the operation of the school system. This was the first time that the government combined fair housing and school violations in a single proceeding.

Considerable progress was made in the continuing efforts to complete the school desegregation process in Southern States. Plans of desegregation were ordered in East Baton Rouge Parish (Baton Rouge), Louisiana,<sup>37</sup> Caddo Parish (Shreveport), Louisiana,<sup>38</sup> Monroe, Louisiana,<sup>39</sup> Tuscaloosa, Alabama,<sup>40</sup> Birmingham,<sup>41</sup> Lubbock, Texas,<sup>42</sup> and South Park (Beaumont),

Texas.<sup>43</sup> New school desegregation suits were filed in Charleston, South Carolina,<sup>44</sup> Marshall, Texas,<sup>45</sup> and Big Spring, Texas.<sup>46</sup> In the Marshall case, a final order requiring implementation of a new plan was entered. Enforcement efforts to assure proper implementation of present plans or development of new plans continued in Rapides Parish (Alexandria), Louisiana,<sup>47</sup> Port Arthur, Texas,<sup>48</sup> and several districts in southern Alabama, including Mobile.<sup>49</sup>

Efforts to remedy sex-based discrimination in schools continued in four cases. In an *amicus curiae* capacity, the United States contended that sex discrimination in the operation of the Ann Arbor, Michigan, high school athletic program was covered by Title IX of the Education Amendments of 1972. This contention was rejected.<sup>50</sup> A similar suit in which the section is participating is being continued with respect to the University of Alaska athletic program.<sup>51</sup> Preparation of cases against a state-operated maritime school, which until recently excluded women,<sup>52</sup> and Texas A & M University for its allegedly discriminatory operation with respect to the Corps of Cadets continue.<sup>53</sup>

In another major case, a comprehensive order was obtained requiring the State of Texas to assure implementation of bilingual education programs designed to meet the educational needs of Mexican-American students.<sup>54</sup> Decisions by the court of appeals affirmed lower court decisions finding a Texas statute that effectively excluded illegal alien children from public schools unconstitutional.<sup>55</sup> A court permanently enjoined Mississippi State University from charging Iranian students tuition, finding the policy was unconstitutional.<sup>56</sup>

## Housing

During the year, the section filed four new suits alleging violations of the Fair Housing Act. A suit against the Town of Glastonbury, Connecticut, a virtually all-white suburb of Hartford, alleged that the Town has implemented a policy, in response to racially motivated citizen opposition, of preventing the development of racially integrated low and moderate income housing within its boundaries.<sup>57</sup> A suit was filed to enforce a conciliation agreement that HUD had obtained from a landlord, and this case was successfully resolved by a consent decree.<sup>58</sup> Two other new cases, described under the education and credit sections, also included allegations of violations of the Fair Housing Act: a suit against the City of Yonkers, New York, included allegations of purposeful racial discrimination with respect to the location of public and subsidized housing;<sup>59</sup> and a suit against the Great Western Bank and Trust of Phoenix, Arizona, alleged discrimination against Indians with respect to real estate loans.<sup>60</sup> In addition, the section participated as *amicus curiae* in a redlining case against the Dallas Federal Savings and Loan Association and the Guardian Savings and Loan Association. This case, which involved alleged violations of the Equal Credit Opportunity Act and

the Fair Housing Act, is described in the credit section.<sup>61</sup>

Six consent decrees were obtained during the year in fair housing cases, and one consent decree was obtained in a case involving the Equal Credit Opportunity Act and the Fair Housing Act. Three of the six housing cases were developed by the section and handled by U.S. Attorneys' Offices, with technical assistance from the section. Four of the housing cases involved racial and national origin discrimination in apartment rentals; one (mentioned above) involved enforcement of a HUD conciliation agreement; and one was a sex discrimination case involving refusal to count alimony or child support income for purposes of determining qualifications for rental.<sup>62</sup>

Trials were completed during the year in two important cases, and at the end of the fiscal year decisions were pending by the district court. In one case, the United States challenged the withdrawal by the Town of Manchester, Connecticut, from the Community Development Block Grant program pursuant to a racially inspired popular referendum, contending that this was done for the purpose of maintaining a virtually all-white municipality by excluding blacks and Hispanics from housing opportunities.<sup>63</sup> In the other case, the City of Birmingham, Michigan, was charged with preventing the development of racially integrated low-income housing within its boundaries, in response to racially motivated citizen opposition.<sup>64</sup>

Favorable court decisions were obtained during the year in the government's suit against the City of Parma, Ohio, in which the district court entered a comprehensive remedial order;<sup>65</sup> and in an enforcement case where the Court of Appeals for the Fifth Circuit upheld a district court's finding of contempt and order of supplemental relief, including an award of attorney's fees to the United States.<sup>66</sup> An unfavorable district court decision was rendered in a case where the United States had alleged national origin discrimination in a landlord's use of a citizenship requirement for the purpose of excluding tenants of Middle Eastern national origin. That decision has been appealed.<sup>67</sup>

Significant appellate matters in the housing area included filing an *amicus curiae* brief in the Supreme Court in support of the independent standing of testers and a fair housing group to file suit under the Fair Housing Act;<sup>68</sup> briefing and oral argument in the Court of Appeals for the Sixth Circuit in the Parma, Ohio, case, where the district court had found a pattern of unlawful conduct by the City and ordered comprehensive relief;<sup>69</sup> and the pursuit of appeals by the United States from two adverse decisions in fair housing cases.<sup>70</sup>

## Credit

During the year, the section filed two new credit cases, settled three lending suits, appealed a decision that limited the relief available to the Attorney General under the Equal Credit Opportunity Act, and filed an *amicus curiae* brief in a private lending action. The section filed its first redlining suit under the Fair

Housing Act of 1968 and the Equal Credit Opportunity Act, alleging that an Arizona bank had a policy of refusing to make loans secured by residential housing located on American Indian reservations.<sup>71</sup> The other case brought was the government's first Equal Credit Opportunity Act suit against a credit union.<sup>72</sup> That action, which was resolved through a consent decree filed simultaneously with the complaint, involved allegations that different standards were used in making loans to black applicants than were imposed on whites and that the lender failed to provide rejected applicants with the notice of adverse action required by the statute.

The section obtained a consent decree in a housing and credit suit resolving charges that a land developer discriminated on the basis of age and national origin in making housing-related loans.<sup>73</sup> A third consent decree was entered in an Equal Credit Opportunity Act suit against one of the largest loan companies in the country.<sup>74</sup> This settlement resolved all equitable claims against the lender raised in the government's complaint, which alleged age and marital status discrimination and failure to provide adequate notice of adverse action to rejected applicants. However, an appeal was taken from an earlier district court decision in this case which held that the Attorney General does not have authority to obtain damages for individual victims of discrimination in Equal Credit Opportunity Act suits.<sup>75</sup> The appeal has been briefed and argued. It should be decided sometime in the next year.

The section participated as *amicus curiae* in a case alleging racial redlining by two lending institutions in the Dallas area. The court's ruling permitting white persons to sue private lenders for racial discrimination under 19th century civil rights statutes, the Fair Housing Act, and the Equal Credit Opportunity Act was consistent with the positions argued in a brief filed by the section.<sup>76</sup>

## Special Litigation Section

The Special Litigation Section is responsible for the protection of rights secured under Title III of the Civil Rights Act of 1964, which prohibits discrimination in public facilities on the basis of race, color, religion, or national origin, and the enforcement, *inter alia*, of Section 504 of the Rehabilitation Act of 1973, 29 U.S. Code 794, *et seq.*, the Civil Rights of Institutionalized Persons Act, P.L. 96-247, the Education of Handicapped Act, 20 U.S. Code 1401, *et seq.*, and the Revenue Sharing Act, 31 U.S. Code 1227, *et seq.*, where these statutes protect the rights of institutionalized and other handicapped persons.

In May 1980, the Civil Rights of Institutionalized Persons Act, P.L. 96-247, was signed into law. The Act gives the Attorney General authority to initiate action on behalf of civilly and criminally institutionalized persons where "egregious or flagrant" conditions are believed to exist which deprive such persons of federally protected and constitutional rights. This statute clarifies

the government's right to sue to vindicate the rights of institutionalized persons.

The section also coordinates the U.S. Attorneys' enforcement of Title II of the Civil Rights Act of 1964, which prohibits discrimination in places of public accommodation.

During the year, the section took action in 13 cases, including the entry into three new cases as *amicus*.

Section efforts on behalf of the institutionalized mentally handicapped persons included obtaining an order in *RAJ v. Kavanaugh*,<sup>77</sup> which was entered pursuant to a settlement agreement, concerning appropriate use of psychotropic drugs and other treatment modalities. A review panel was established to ensure the proper implementation of the relief obtained in the settlement. In another noteworthy case, *Garrity and U.S. v. Gallen*,<sup>78</sup> which sought to vindicate the rights of the mentally retarded residents of the Laconia State School in New Hampshire, the court found numerous violations of Section 504 of the Rehabilitation Act of 1973. In a lengthy opinion, the court ordered, *inter alia*, the development of individualized plans of care, prohibited the exclusion of residents on the basis of their handicaps from services and programs, and rejected the presumption that severely and profoundly retarded persons cannot benefit from deinstitutionalization. The court also ordered numerous environmental improvements at Laconia State School. In another important case, an order was obtained requiring the District of Columbia to revamp procedures at Forest Haven, its residential mental retardation facility, to assure adequate medical and food supplies, to develop less restrictive placements for 100 residents, and to accelerate diagnosis of other residents needs in the next two years.<sup>79</sup>

The section participated in several major prison cases and received significant orders and successful settlements where conditions of confinement were at issue—including overcrowding, unsafe and unsanitary facilities, lack of adequate medical care, environmental inadequacies, classification inadequacies, and guard brutality. One of the most comprehensive orders was in *Ruiz and U.S. v. Estelle*,<sup>80</sup> the longest federal civil rights trial in history. The 250 page order found areas of impermissible systemic constitutional violations in the operation of 18 Texas prisons which incarcerate approximately 30,000 prisoners. A subsequent order outlined requirements concerning the totality of conditions of confinement. A partial consent decree which addressed, *inter alia*, health care, the needs of handicapped prisoners, work safety and hygiene, as well as conditions of and length of time in solitary confinement was also entered as an order in the *Ruiz* case. In *Gates and U.S. v. Collier*,<sup>81</sup> a ruling was obtained extending the protections of the *Gates* orders, which covered the full range of prison conditions, to some 1,400 state prisoners housed in local jails. In addition, a consent decree was negotiated governing conditions at the state penitentiary during the transitional period when some state prisoners are moved to the penitentiary from local jails in anticipation of the opening of a new 1,500-person facility on the penitentiary grounds. Discovery is being continued



to determine in which local jails state prisoners may not be afforded the conditions of confinement mandated by the *Gates* orders. In *Newman v. Alabama*,<sup>82</sup> the court found that the defendants were not in compliance with the 1980 consent decree regarding overcrowding, and ordered further relief. Similarly, in *Bibb v. Montgomery County Jail*,<sup>83</sup> the court ordered the removal of 51 state prisoners from the jail, and set limitations on the number of prisoners who could be jailed there. Other prison matters included a consent decree which resolved the issues of unconstitutional conditions of confinement in the Bexar County Jail in San Antonio.<sup>84</sup> Successful settlements were also reached in three other conditions suits in which the United States participated as *amicus*.<sup>85</sup>

The section completed trial in a juvenile right to treatment suit against two institutions in Puerto Rico<sup>86</sup>—with intervention under P.L. 96-247. Additional P.L. 96-247 activities included investigations: Five were in the prisons and jails area concerning unconstitutional conditions of confinement;<sup>87</sup> six were in the mental health care area concerning conditions and treatment;<sup>88</sup> and two concerned adequacy of treatment provided to juveniles.<sup>89</sup> All of the investigations except one are still under review and evaluation. The Dauphin County investigation has been closed.

## Voting Section

This section enforces voting laws, including 42 U.S. Code 1971 and 1974 and the Voting Rights Act of 1965, as amended in 1970 and 1975. These statutes are designed to ensure that all qualified citizens have the opportunity to register and vote without discrimination on account of race, color, membership in a language minority group, or age. The section also enforces the Overseas Citizens Voting Rights Act.

Section 5 of the Voting Rights Act of 1965, as amended, requires that covered jurisdictions submit all changes in voting practices or procedures to either the U.S. District Court for the District of Columbia for judicial review, or to the Attorney General for administrative review. Changes not submitted and those that are not successfully precleared are not legally enforceable. The determination of the Attorney General, which must be made within 60 days of receipt of a complete submission, concerns whether changes have the purpose or effect of discriminating on account of race, color, or language minority group.

During the year, 2,001 submissions involving a total of 6,072 voting-related changes were submitted to the Attorney General under Section 5. These submissions included over 100 requests for review of redistricting plans that were enacted to bring district boundary lines into conformity, based upon 1980 census data, with the one-person, one-vote requirements. These were the first of more than 1,000 redistricting plans that are expected to be submitted under Section 5, and included plans for statewide redistricting in Alaska, Alabama, California, North Carolina, South

Carolina, South Dakota, Texas and Virginia. Objections were entered to 21 submissions during the year, including objections to redistricting plans that would have unfairly restricted the ability of blacks to elect persons of their choice to the Virginia Senate and House (the latter part was revised to cure the objectionable features and subsequently precleared), and to the governing bodies of Barbour and Conecuh Counties in Alabama, and of Holly Springs, Mississippi. Additional objections included: an objection to procedures in Georgia which would have limited the opportunity of black voters to get assistance in voting and could have allowed discrimination against blacks in the voter registration process; objections to procedures for purging lists of registered voters in Mississippi, and for reidentifying voters in Perry County, Alabama, that would have removed a disproportionately large number of eligible black voters from the registration rolls; an objection to the change of a polling place in Wilson County, Texas, from an area densely populated by Mexican-Americans and blacks to a rural site in an area populated only by Anglos; and, among objections to changes in methods of election, an objection to the addition of a majority vote requirement that would have diluted the right to vote of blacks in at-large elections in Augusta, Georgia.

Final revisions to the procedural guidelines for the administration of Section 5 were published<sup>90</sup> in order to reflect changes in the law since 1971, when the guidelines were issued, and to give jurisdictions more helpful instruction about the submission process.

Other provisions of the 1965 Act authorize the Attorney General to assign observers to monitor elections to ensure that the right to vote and to have the vote properly counted is not denied during the election process. Under these provisions, 385 observers were assigned to cover five elections in three states, including local elections held in eight counties, during the 1980 Presidential election.

The section participated in 10 cases during the year, including three cases in which the courts considered whether the evidence was sufficient to support a finding that an at-large method of election diluted the voting rights of blacks. Noteworthy among the cases were five instances where the use of discriminatory voting procedures that had not received preclearance under Section 5 were blocked. They included redistricting plans to which Attorney General Civiletti had objected in Clarke County, Alabama,<sup>91</sup> and in Medina County, Texas.<sup>92</sup> The use of dilutive at-large elections was enjoined in Colleton County, South Carolina.<sup>93</sup> The method of election in Port Arthur, Texas, was changed to cure the impact of dilutive annexations.<sup>94</sup> The use of an election schedule that had a discriminatory impact on Mexican-Americans and blacks was enjoined in Harris County, Texas.<sup>95</sup> Examples of the effect of the decisions obtained include the election of a Mexican-American to the governing body of Medina County, Texas, the first time in the history of this 48 percent Mexican-American county, and the scheduled resumption of an-

nual council elections, which had not been held in the City of Port Arthur, Texas, since 1977 because of the city's refusal to conduct the elections on a racially fair basis.

Other litigative activities included a case where the State of Mississippi sought federal court preclearance of an "open" primary method of holding state elections.<sup>96</sup> The three-judge panel dismissed claims by the state that Section 5 is unconstitutional on its face and as applied by the Attorney General. Three other court decisions<sup>97</sup> allowed overseas and absentee military voters to have their ballots counted in the 1980 Presidential election in Florida and New York. Evidence was obtained by working closely with officials of the Departments of Defense and State. A similar case in Santa Clara County, California, was handled by the U.S. Attorney with the full support and continuing advice of the section. The position of the section was sustained in 15 of the 17 instances where issues in litigation were resolved. The two adverse decisions have been appealed.

In a major effort, the section compiled data on all aspects of the enforcement of the Voting Rights Act since January 1, 1975, for use in the Administration's study of issues relating to the extension of the Act, and for use in responding to requests from members of Congress and others about extension issues. Special procedures that were instituted also allowed the section to make timely responses to over 550 comments received from citizens and governmental officials regarding extension of the Act.

The section reviewed all Section 5 objections interposed since the enactment of the Voting Rights Act, and procedures were initiated to determine whether further action will be necessary to compel compliance with any of those objections.

A concentrated review of all pending matters and cases resulted in closing 119 matters and 13 cases on which work had been completed, the information in the data fields of the section's computerized docket system being refined and methods initiated to assure the continuing accuracy of the information.

Close contact was maintained throughout the year with the Department of Defense's Federal Voting Assistance Program, the Federal Election Commission's National Clearinghouse on Election Administration, the Office of Personnel Management, and the U.S. Commission on Civil Rights. The purpose was to assist the agencies in their responsibilities for implementing programs relating to statutes enforced by the section.

## Civil Rights of Institutionalized Persons

The Civil Rights of Institutionalized Persons Act, 42 U.S. Code 1997 (hereinafter referred to as the Act), was enacted in May 1980. It authorizes the Attorney General to initiate or to intervene in equitable actions against public institutions in which he has reasonable cause to believe there is a systematic pattern or practice of flagrant or egregious violations of the affected persons' constitutional or federal statutory rights. This report will provide members of Congress with the details surrounding ac-

tions initiated under the Act in fiscal 1981, and information concerning the progress made in federal institutions toward meeting promulgated standards for such institutions or constitutionally guaranteed minima. It is submitted in accord with the reporting requirements of 42 U.S. Code 1997f.

### Actions Initiated in Fiscal 1981

Section 8 of the statute requires specified information concerning all actions instituted pursuant to the Act. That information follows.

To date, no case has been initiated under the Act. However, the following actions occurred during the fiscal year:

- On October 15, 1980, we notified Mr. Steven R. Reid, Chariman of the Dauphin County Board of Prisons, and other appropriate officials of our intent to investigate allegations of unconstitutional practices and conditions in the Dauphin County Prison, Harrisburg, Pennsylvania. This investigation was initiated after receipt of allegations of brutality by correctional officers, inadequate medical and psychiatric services, inadequate access to courts and legal materials, and egregious conditions of confinement. After evaluating the data collected during the investigation, we concluded that no further action was warranted. The Department advised Mr. Reid on August 4, 1981 that the investigation was being closed.
- On November 5, 1980, we formally advised Governor David Treen of our intent to investigate conditions and treatment of East Louisiana State Hospital and Feliciana Forensic Facility in Jackson, Louisiana. The investigation was based in part on a series of newspaper articles describing seriously substandard living conditions at the two facilities, including several recent deaths among patients, lack of care, inadequate staffing, brutality and filthy conditions. The investigation has thus far included tours of the facilities by Department attorneys and an expert consultant, meetings with state officials to discuss recent steps taken to improve services and physical conditions, and review of institutional records. The Department is continuing to evaluate the facts gathered in this investigation.
- On November 7, 1980, we notified Governor Harry Hughes and other state officials of our intent to investigate conditions and treatment provided to the mentally retarded residents of Rosewood Center, Owings Mills, Maryland. The Department received a written complaint in May 1980 alleging that residents of Rosewood were confined in an environment that failed to provide necessary rehabilitative services; that residents were needlessly institutionalized; that residents were subjected to physical abuse; and that Rosewood was short of crucial staff. The investigation has included meetings with state officials and client advocacy groups, tours of the institution on several occasions, once

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with an expert consultant, and review of numerous institutional and state documents. We are presently evaluating the collected information.

- On November 14, 1980, we notified Governor Hugh Carey and appropriate corrections officials of our intent to investigate Attica Prison, Attica, New York. Previously, a number of inmate complaints alleging inadequate conditions of confinement, including the special housing unit were forwarded to the Department by the Honorable John T. Curtin, U.S. District Judge for the Western District of New York. We reviewed the complaints and found them to be a sufficient basis on which to initiate an investigation under the Act. We are continuing to evaluate the data already collected by the Federal Bureau of Investigation on this matter.
- On December 3, 1980, we notified Governor Lee Sherman Dreyfus and state correctional officials of our intent to investigate the Wisconsin prison system. The Department had previously received a number of inmate complaints alleging unconstitutional conditions within the state prison facilities. Our investigation has thus far focused particularly on the areas of environmental health and safety, and medical care delivery. An expert consultant has visited the facilities and is preparing a report based upon his observations of the prison, and review of institutional documents.
- On December 3, 1980, we notified Mayor Kevin H. White and other Boston city officials of our intent to investigate conditions of confinement at Deer Island House of Corrections, Boston, Massachusetts. This action was based upon receipt of citizen correspondence and newspaper articles which alleged unconstitutional conditions of confinement at the facility, including inadequate physical facilities, medical care and overcrowding. We are continuing to evaluate information on this facility gathered by the Federal Bureau of Investigation at our request.
- On December 12, 1980, we notified Governor Richard Thornburgh and other state correctional officials of our intent to investigate Western State Correctional Institution, Pittsburgh, Pennsylvania. On the basis of prior inmate correspondence, the Federal Bureau of Investigation obtained requested information concerning the conditions of confinement. On August 5, 1981, we advised Governor Thornburgh that our investigation indicated deficiencies primarily in the areas of medical and mental health care. We recommended a number of corrective measures including assessment of professional staffing needs, plans for training medical personnel, and provision of appropriate services and housing to mentally ill inmates. We have subsequently received a number of plans designed by state correctional

officials to correct the identified deficiencies. We are reviewing these plans.

- On December 15, 1980, we notified Governor Richard L. Thornburgh and state juvenile officials of our intent to investigate the Youth Development Center, Cornwell Heights, Pennsylvania. Our investigation was based upon information contained in reports on the facility by public interest groups which documented deficiencies in services and conditions of confinement. These deficiencies included inadequate educational and rehabilitative services as well as substandard living facilities. The investigation has included tours of the facility, including one by an expert consultant, and a review of documents from the institution. We are continuing to evaluate the information received.
- On February 24, 1981, we notified Governor John D. Rockefeller IV and other state officials of our intent to investigate the West Virginia Industrial School for Boys in Pruntytown, West Virginia. We had previously received a report prepared by a citizens group which indicated significant deficiencies in services provided to juveniles confined in the facility. We had also received information that residents had been abused by staff at Pruntytown. Our investigation has focused on the physical conditions, educational and programmatic services, and the degree to which the institution protects the juveniles from harm. We have toured the facility, and are reviewing documents provided by the state.
- On March 23, 1981, we notified Governor Frank White and state health officials of our intent to investigate Benton Services Center Nursing Home in Benton, Arkansas. The action was initiated on the basis of a written complaint which alleged that the physical environment at the facility was inadequate; that large groups of residents, especially mentally retarded and mentally ill residents, received no program services at all; that there were staff deficiencies; and that patient abuse had occurred. Thus far, we have toured the facility with an expert consultant and are reviewing other factual data concerning the facility. We are awaiting receipt of the consultant's report on his findings.
- On March 23, 1981, we notified Governor Robert Graham and state health officials of our intent to investigate South Florida State Hospital, Hollywood, Florida. Our investigation was initiated on the basis of a citizen complaint and newspaper articles which suggested serious deprivations of constitutional rights due to alleged staffing shortages, lack of treatment programs, inadequate physical environment and instances of physical abuse of residents. Our investigation has thus far included a tour of the institution, and a review of institutional records and plans for improvement. On



August 5, 1981, we advised Governor Graham of our finding that Florida officials have prepared extensive remedial plans to address deficiencies in the operation of South Florida State Hospital. Initial legislative proposals based upon these plans were to be finalized in fall, 1981, for submission to the state legislature. Based upon the thoughtful formulation of these plans and their submission to the legislature for action, we propose to delay further investigation pending the result of legislative action.

- On July 13, 1981, we notified Governor James R. Thompson and other state officials of our intent to investigate Dixon Development Center, Dixon, Illinois. We had previously received information which alleged that conditions at the facility were substandard; that staffing was deficient; that some residents of the facility had been abused; that habilitation services were inadequate; and that some residents were receiving inappropriate medications. Division attorneys have toured the facility and consulted with groups of interested citizens. The investigation is continuing.

Through rather unique circumstances, the Department intervened in *Santana v. Collazo*, Civil Action No. 75-1187 (D. P.R.) under the Act on January 27, 1981. The United States previously participated as plaintiff-intervenor in this case from December 6, 1976 to September 11, 1980 when it was dismissed by the court. In its order of dismissal, however, the court granted the Attorney General the opportunity to subsequently move to intervene pursuant to Section 5(c) of the Act. The pre-filing requirements of the Act were deemed to have been met by the facts obtained through discovery and trial evidence, and exchanged during lengthy negotiations which had earlier resulted in three proposed consent decrees. Trial concluded in July 1981. Post-trial briefs were submitted in October 1981.

## Federal Institutions

Section 8(5) of the Act requires the Attorney General to report on the progress made in each federal institution toward meeting existing promulgated standards for such institutions or constitutionally guaranteed minima.

The federal prison system is operated by the Bureau of Prisons (BOP) which has taken a number of steps to meet such standards and protect constitutional rights. To date, twelve federal prisons have been accredited by the Commission on Accreditation for Corrections (CAC); three other BOP facilities are candidates for accreditation and are awaiting final audit or full hearing before the Commission. The goal of the federal prison system, as set forth in its current Five Year Plan (1981-1985) is that all federal correctional facilities will be: 1) accredited by the Commission on Accreditation for Corrections, and 2) meet the Federal Standards for Prisons and Jails, issued by the Department of Justice. The BOP is on schedule in meeting this goal. Since 1978, the BOP has initiated the year long accreditation process in five to

12 of its facilities each year. Additionally, for those institutions which have already been accredited, a year long reaccreditation process must be undertaken every third year.

In 1981, the federal prison system began an internal audit, the Standards Compliance Review project, to ensure that its program managers incorporate the CAC correctional standards into their institution's basic policy directives and procedural guidelines. Where the Review indicated that such inclusion was not occurring, plans of actions were developed to revise policy. The information gathered by this internal audit permits the BOP to identify areas where standards are not currently being met. In this way, deficiencies in policies, procedures or resources may be corrected in order to obtain accreditation for the facility.

The BOP has launched a serious, well planned effort to bring its prisons into compliance with professional correctional standards. Based upon its efforts since 1978, the Bureau has made considerable progress toward meeting standards and guaranteeing minimal constitutional protections.

Similar progress has been made at St. Elizabeth's Hospital, Washington, D.C., which is operated by the Department of Health and Human Services. The hospital, which serves approximately 3,000 persons with psychiatric disorders, is accredited by the Joint Commission on Accreditation of Hospitals (JCAH) which requires compliance with specific standards set forth in *JCAH Consolidated Standards for Psychiatric Hospitals* and *Standards for Community Mental Health Care*. St. Elizabeth's Hospital has taken additional steps to provide for the constitutional rights of its patient population by establishing an internal Patient Advocate's Office. This office is charged with the responsibility of operating a complaint system to assist in problem resolution and monitoring a variety of hospital reports to assure appropriate action on alleged violation of patient rights, as well as responsibility to educate hospital staff about the rights of patients.

The enforcement activities of the Civil Rights Division under the Act are proceeding deliberately in accord with the requirements imposed by Congress in the Act. Conciliation with state and local officials is being stressed, in an effort to achieve reform where necessary without resort to litigation. This conciliatory approach, which accords with the intent of Congress in drafting the Act, has already begun to bear fruit. The Division will continue in the days ahead to seek out and resolve all violations of the civil rights of institutionalized persons under the Act.

## CITATIONS

- (1) *Gulf Oil v. Bernard*, 49 U.S.L.W. 4604 (U.S. June 1, 1981).
- (2) *County of Washington v. Gunther*, 49 U.S.L.W. 4623 (U.S. June 8, 1981).
- (3) *Carson v. American Brands*, 49 U.S.L.W. 4171 (U.S. Feb. 25, 1981).
- (4) *McDaniel v. Sanchez*, 49 U.S.L.W. 4615 (U.S. June 1, 1981).
- (5) *Pennhurst State School v. Halderman*, 49 U.S.L.W. 4363 (U.S. April 20, 1981).
- (6) *Fiedler v. Marumsco*, 631 F.2d 1144 (4th Cir. 1980).
- (7) *Doe v. Plyler*, 628 F.2d 448 (5th Cir. 1980).
- (8) *Lodge v. Buxton*, 639 F.2d 1358 (5th Cir. 1981).

- (9) *United States v. Clark, et al.*, No. 81-20015 (W.D. Ark.).
- (10) *United States v. McKenzie, et al.*, No. 81-281 (E.D. La.).
- (11) *United States v. Fitzgerald*, No. N-81-65 (D. Conn.).
- (12) *United States v. Evans, et al.*, No. 80-CR-83 (N.D. Ill.).
- (13) *United States v. Franklin*, No. CR-80-125 J (D. Utah.).
- (14) *United States v. Bishop, et al.*, No. 80-80536 (D. Mich.).
- (15) *United States v. Kilgore*, No. CR 81-C-00027-NE (N.D. Ala.).
- (16) *United States v. Gauthier*, No. 80-103 (D. Mass.).
- (17) *United States v. John Doe, Jr.*, No. 81-00156 (M.D. Pa.).
- (18) *United States v. Conyers*, No. Cr. 79-195-04 D (M.D. N.C.).
- (19) *United States v. City of Los Angeles*, (C.D. Calif., No. 77-1986-JWC).
- (20) *Ensley Branch NAACP & United States v. Seibels & Jefferson*, (N.D. Ala., CA No. 75-P-0666-S).
- (21) *United States v. Farmington, New Mexico*, (D. N.M., Civ. 80-037-C).
- (22) *United States v. North Carolina*, (E.D. N.C., Civ. 75-0328 Civ 5).
- (23) *United States v. Fairfax County, Va.*, (E.D. Va., No. 78-862-A).
- (24) *United States v. State of Texas*, (W.D. Tex., CA No. A-78-CA-287).
- (25) *United States v. Troup, Texas*, (E.D. Tex., CA No. TY 80-453).
- (26) *United States v. Louisiana*, C.A. No. 80-3300 (E.D. La.) (three judge).
- (27) *Ayers and United States v. Winter*, C.A. No. GC 75-9-K (N.D. Miss.) (three judge).
- (28) *United States v. Board of Commissioners of City of Indianapolis*, 506 F. Supp. 657 (S.D. Ind., 1979) and subsequent orders.
- (29) *United States v. South Bend Community School Corporation*, C.A. No. S80-0035 (N.D. Ind., consent order filed April 17, 1981).
- (30) *Liddell v. St. Louis Board of Education*, 491 F. Supp. 351 (E.D. Mo. 1980), and subsequent orders.
- (31) *United States v. School District of City of Ferndale, Michigan*, 499 F. Supp. 367 (E.D. Mich. 1980).
- (32) *United States v. Board of Education of the City of Chicago*, C.A. No. 80-C-5124 (N.D. Ill.).
- (33) *United States v. Unified School District No. 500, Kansas City*, (Wyandotte County), Kansas, C.A. KC-3738 (D. Kansas, March 18, 1981) (appeal pending, 10th Circuit No. 81-1829).
- (34) *Reed v. Rhodes*, 500 F. Supp. 404 (N.D. Ohio 1980).
- (35) *United States v. Yonkers Board of Education, City of Yonkers and Yonkers Community Development Agency*, C.A. No. 80-CIV 6761 (S.D. N.Y.), filed December 11, 1980.
- (36) *United States v. Lima City School District*, C.A. No. C-80-723 (N.D. Ohio, filed December 4, 1980).
- (37) *Davis, et al. and United States v. East Baton Rouge Parish School Board*, C.A. No. 1662-A (M.D. La., May 1, 1981).
- (38) *Jones and United States v. Caddo Parish School Board*, C.A. No. 11055 (W.D. La., May 7, 1981).
- (39) *Andrews, et al. and United States v. Monroe City School Board*, C.A. No. 11297-M (W.D. La., June 25, 1981).
- (40) *United States v. Tuscaloosa City School Board*, C.A. No. 70-251 (N.D. Ala., July 29, 1981).
- (41) *Armstrong and United States v. Board of Education of the City of Birmingham*, C.A. No. 9678 (N.D. Ala., consent decree entered October 21, 1980).
- (42) *United States v. Texas Education Agency*, C.A. No. CA-5-806 (N.D. Tex., 1981) unpublished.
- (43) *United States v. Texas Education Agency (South Park Independent School District)*, C.A. No. B-6819-CA (E.D. Tex.) upon remand from 647 F.2d 504 (Fifth Circuit 1981).
- (44) *United States v. Charleston County School District and State of South Carolina*, C.A. No. 81-50-8 (D. S.C.) filed January 9, 1981).
- (45) *United States v. Marshall Independent School District*, C.A. No. M-80-200-CA (E.D. Tex.) unpublished order July 28, 1981).
- (46) *United States v. Big Spring Independent School District*, C.A. No. I-80-53 (N.D. Tex., filed September 18, 1980).
- (47) *Valley and United States v. Rapides Parish School*, 499 F. Supp. 450 (W.D. La., 1980) affirmed in part 646 F.2d 925 (Fifth Circuit 1981).
- (48) *United States v. Texas Education Agency (Port Arthur Independent School District)*, C.A. No. 6820 (E.D. Tex.) decided April 28, 1981.
- (49) *Davis, et al. v. Board of School Commissioners of Mobile County, Alabama*, C.A. No. 3003-63-H (S.D. Ala.) (pending).
- (50) *Othen v. Ann Arbor School Board*, 507 F. Supp. 1379 (E.D. Mich. 1981).
- (51) *Pavey v. University of Alaska*, C.A. No. A79-019 (D. Alaska, filed November 20, 1979).
- (52) *United States v. Massachusetts Maritime Academy*, C.A. No. 76-1696-Z (D. Mass.).
- (53) *Zentgraf v. Texas A&M University*, No. H-79-943 (S.D. Tex., filed May 11, 1979).
- (54) *United States v. State of Texas*, 506 F. Supp. 405 (E.D. Tex. 1981).
- (55) *In Re Alien Children Ed. Litigation*, 501 F. Supp. 544 (S.D. Tex. 1980).
- (56) *Shabani v. Simmons*, No. EC 80-160-LS-P (N.D. Miss. April 17, 1981) (order granting motion for summary judgment).
- (57) *United States v. Town of Glastonbury, Connecticut*, C.A. No. H-80-770 (D. Conn.), filed December 1, 1980.
- (58) *United States v. Zuckerman*, C.A. No. 80-1449 (D. Colo.), complaint filed October 24, 1980, consent decree filed June 4, 1981.
- (59) *United States v. Yonkers Board of Education, City of Yonkers, and Yonkers Community Development Agency*, C.A. No. 80-CIV-6761 (S.D. N.Y.), filed December 1, 1980.
- (60) *United States v. Great Western Bank and Trust*, C.A. No. 80-1026-PHX-CLH (D. Ariz.), filed December 16, 1980.
- (61) *Fisher v. Dallas Federal Savings and Loan Association and Guardian Savings and Loan Association*, C.A. No. 79-0565-J (N.D. Tex.), amicus curiae brief filed December 2, 1980.
- (62) *United States v. Wood Properties*, C.A. No. 79-3605 (M.D. Tenn.), complaint filed November 20, 1979, consent decree filed July 13, 1981.
- (63) *Angell and United States v. Zinsser and Town of Manchester, Connecticut*, C.A. No. H-79-229 (D. Conn.), filed October 23, 1979.
- (64) *United States v. City of Birmingham, Michigan*, C.A. No. 80-70991 (E.D. Mich.), filed March 7, 1980.
- (65) *United States v. City of Parma*, 504 F. Supp. 913 (N.D. Ohio 1980), appeal pending, 6th Cir. No. 81-3031.
- (66) *United States v. Worrell*, No. 80-7118 (5th Cir.), decided March 13, 1981, petition for certiorari pending, No. 80-2074 (O.T. 1980).
- (67) *United States v. Glisan*, C.A. No. 78-A-1195 (D. Colo.), decided May 5, 1981, August 21, 1981, appeal pending, 10th Cir. No. 81-1746.
- (68) *Havens Realty Corporation v. Coleman*, No. 80-988 (O.T. 1980).
- (69) *City of Parma v. United States*, 6th Cir. No. 81-3031.
- (70) *United States v. The Welles-Bowen Co.*, 6th Cir. No. 80-3014; *United States v. Glisan*, 10th Cir. No. 81-1746.
- (71) *United States v. Great Western Bank and Trust*, C.A. No. CIV 80-1026-PHX-CLH (D. Ariz. Complaint filed December 16, 1980).
- (72) *United States v. Erlanger Hospital Credit Union*, C.A. No. 1-80-420 (E.D. Tennessee, complaint and consent decree filed December 8, 1980).
- (73) *United States v. Sumer Advertising Agency, Inc. and Mitchell Development Corporation of the Southwest*, C.A. No. SA78 CA 199 (W.D. Tex. decree filed October 16, 1980).
- (74) *United States v. Beneficial Corporation*, C.A. No. 79-1393 (D. N.J. decree filed November 18, 1980).
- (75) *United States v. Beneficial Corporation*, 492 F. Supp. 650 (D. N.J. 1980) Notice filed January 9, 1981.
- (76) *Fischer v. Dallas Federal Savings and Loan*, C.A. No. CA 3-79-0565-R (N.D. Tex. Motion to dismiss denied February 18, 1981).
- (77) *RAJ v. Kavanaugh*, C.A. 3-74-394C (N.D. Texas, March 5, 1981).
- (78) *Garrity & U.S. v. Gallen*, C.A. 78-116 (D. N.H., August 17, 1981).

- (79) *Evans & U.S. v. Barry*, C.A. 76-0293 (D. D.C., June 25, 1981).
- (80) *Ruiz & U.S. v. Estelle*, 609 F.2d 118 (5th Cir. 1980).
- (81) *Gates & U.S. v. Collier*, C.A. 73-1790 (N.D. Miss., August 13, 1981).
- (82) *Newman v. Alabama*, 559 F.2d 285 (5th Cir. 1977), C.A. 3501-N (M.D. Ala., July 15, 1981).
- (83) *Bibb v. Montgomery County Jail*, C.A. 76-380-N (M.D. Ala., Oct. 19, 1980).
- (84) *Devonish v. Hauck*, SA-73-CA-59 (W.D. Tex., August 26, 1981).
- (85) *Daniels v. Zant*, 79-110-MAC (M.D. Ga., June 5, 1981); *Mariscal v. Lowe*, C.A. 579-666-LKK (E.D. Calif., Sept. 18, 1981); *Watson v. Ray*, C.A. 78-106-1 (S.D. Iowa, May, 1981).
- (86) *Santana & U.S. v. Collazo*, C.A. 75-1187 (D. P.R., Jan. 27, 1981).
- (87) Dauphin County Prison, Harrisburg, Penn.; Attica Prison, Attica, N.Y.; Wisconsin Prison System; Deer Island House of Corrections, Boston, Mass.; and Western State Correctional Institution, Pittsburgh, Pa.
- (88) East Louisiana State Hospital, Jackson, La.; Feliciana Facility, Jackson, La.; Rosewood Center, Owings Mill, Md.; Benton Center Nursing Home, Benton Ark.; South Florida State Hospital, Hollywood, Fla.; and Dixon Development Center, Dixon, Ill.
- (89) Youth Development Center, Cornwell Heights, Pa.; and West Virginia Industrial School for Boys, Pruntytown, W. Va.
- (90) 46 Fed. Reg. 870 (Jan. 5, 1981).
- (91) *United States v. Clarke County Commission*, Civil Action No. 80-0547-P (S.D. Ala., Oct. 24, 1980).
- (92) *County Commissioners Court, Medina County, Texas v. United States*, Civil Action No. 80-0241 (S. D.C., Nov. 4, 1980).
- (93) *United States v. Board of Commissioners of Colleton County, South Carolina*, Civil Action No. 78-903 (D. S.C., Feb. 17, 1981).
- (94) *City of Port Arthur, Texas v. United States*, Civil Action No. 80-0648 (D. D.C., June 6, 1981); *United States v. City of Port Arthur*, Civil Action No. B-80-216 CA (E.D. Tex., Aug. 3, 1981).
- (95) *United States v. County School Trustees of Harris County, Texas*, Civil Action No. H-80-143 (S.D., Tex., June 6, 1981).
- (96) *State of Mississippi v. United States*, Civil Action No. 79-3469 (D. D.C., Sept. 29, 1981).
- (97) *United States v. State of Florida*, Civil Action No. TCA 80-1055 (N.D. Fla., Nov. 6, 1980); *United States v. New York State Board of Elections*, No. 76-CV-440 (N.D. N.Y., Nov. 10, 1980); *United States v. County of Santa Clara*, No. C-80-4103-WWS (N.D. Cal., Nov. 4, 1980; March 15, 1981).



# Tax Division

## John F. Murray Acting Assistant Attorney General

The Assistant Attorney General in charge of the Tax Division is responsible for representing the United States and its officers in civil and criminal tax litigation arising under the federal revenue laws, other than proceedings in the U.S. Tax Court (which are handled by the Chief Counsel of the Internal Revenue Service (IRS)). The Division's primary client is the IRS, but it also represents other federal departments and agencies in their dealings with state and local taxing authorities.

In civil tax litigation, the Division is responsible for the conduct of cases in the federal district courts, state courts, the U.S. Court of Claims, and the federal courts of appeals. The Division also participates in cases before the U.S. Supreme Court, including oral arguments on assignment by the Solicitor General.

In criminal cases arising under the internal revenue laws, the Division's responsibilities include control and supervision of the institution of criminal proceedings and collaboration with U.S. Attorneys in the conduct of such proceedings at both the trial and appellate levels.

The Division's primary goals are to assist the IRS in the collection of the federal revenue, to deter willful deception and illegal tax evasion through prosecution of criminal offenders, and to help establish uniform legal principles of taxation that will serve as nationwide guidelines to taxpayers and the IRS.

An important task of the Division is to coordinate its litigating policies with IRS administrative policies and the Department of the Treasury's tax legislative concerns. Taxpayers are entitled to uniformly fair and speedy treatment before federal and state courts, and the Division endeavors to cooperate with taxpayers and their legal representatives to attain this end by expediting the handling of litigation in accordance with uniform, national policies.

Types of litigation in which the Division represents the federal government include:

1. Criminal prosecutions involving attempts to evade taxes, willful failure to file returns or to pay taxes, filing false returns and other deceptive documents, and making false statements to revenue officials.

2. Refund suits brought by taxpayers to recover taxes alleged to have been erroneously or illegally assessed or collected.

3. Suits brought by the United States to collect unpaid assessments, to foreclose federal tax liens or to determine the priority of such liens, to obtain judgments against delinquent taxpayers, to enforce IRS administrative summonses, and to establish tax claims in bankruptcy, receivership, and probate proceedings.

4. Proceedings involving mandamus, injunctions, and other

writs arising in connection with internal revenue matters.

5. Suits against IRS employees for damages claimed because of alleged injuries caused in the performance of their official duties.

6. Suits against the Secretary of the Treasury, the Commissioner of Internal Revenue, or other officials to test the validity of federal tax regulations or rulings, including declaratory judgment actions pursuant to Section 7428 of the Internal Revenue Code, challenging initial denial or revocation of an organization's tax-exempt status or other classification under the Code.

7. Proceedings against the Division and the IRS for disclosure of information under the Freedom of Information Act or for damages for alleged improper disclosure of information under the Privacy Act.

8. Intergovernmental immunity suits in which the United States resists attempts to apply a state or local tax to some activity or property of the United States.

9. Suits brought by taxpayers pursuant to Section 7429 of the Internal Revenue Code for a judicial determination as to the reasonableness of the use of jeopardy/termination assessment procedures and the appropriateness of the amount so assessed.

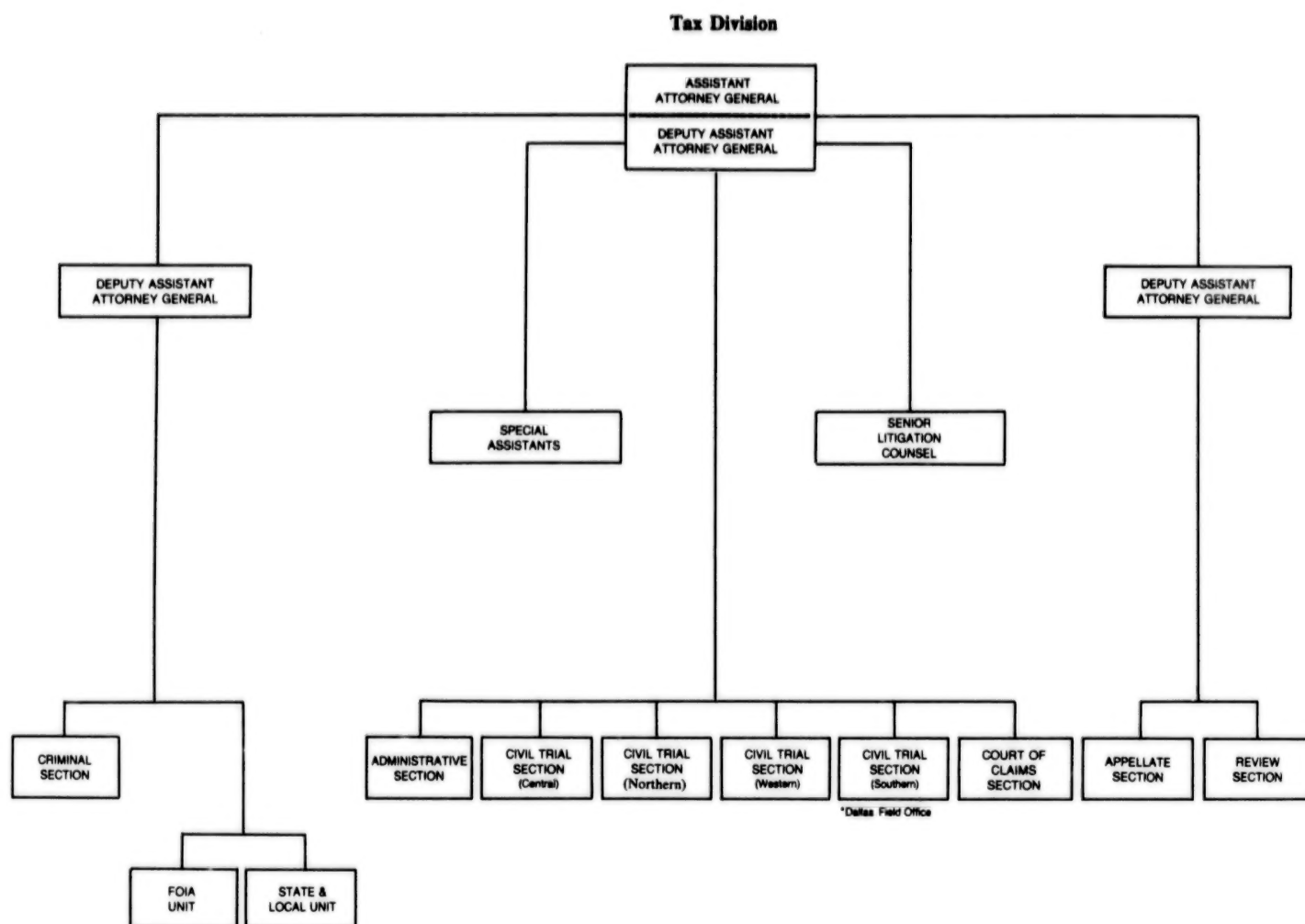
10. Suits brought by individuals to foreclose mortgages or to quiet title to property in which the United States is named as a party defendant because of the existence of a federal tax lien on the property.

In addition to its litigating responsibilities, the Division is active in the legislative process. It endeavors to keep Congress informed of the impact of existing and proposed legislation affecting tax litigation and substantive tax law, and to keep Division attorneys informed of legislative developments that will affect their work.

In accordance with Attorney General Smith's commitment to developing and improving litigating skills in the Department, the Division regularly conducts training programs for its attorneys. The programs include lectures and workshops devoted to the handling of all phases of criminal and civil litigation, with special emphasis on problems unique to tax litigation and the development of advocacy skills. Guest lecturers from within and outside the government participate in the programs.

## Appellate Cases

The Division is responsible for handling all appeals from judgments of the federal district courts in civil and criminal tax cases and all appeals from decisions of the U.S. Tax Court. The Divi-



sion is also in charge of appeals to state courts in cases involving certain tax-related issues, such as the enforcement of federal tax liens and the applicability of state and local taxes to the federal government and those with whom it deals.

In connection with tax litigation in the U.S. Supreme Court, attorneys in the Division's Appellate Section prepare petitions for *certiorari* and memoranda in opposition to taxpayers' petitions, and prepare briefs and memoranda of law on the merits, under the supervision of the Office of the Solicitor General.

In fiscal 1981, the Division processed 347 appeals from Tax Court decisions and 558 appeals in civil cases from the federal district courts. The Division also handled 26 appeals from state courts and 167 appeals in criminal tax cases.

During the year, 171 petitions for *certiorari* were pending or received, 163 of which were taxpayer petitions. The Supreme Court acted on 146 petitions for *certiorari* in tax cases; 136 taxpayer petitions were denied and three granted; and five government petitions were granted and two were denied.

The Appellate Section prepared 627 briefs on the merits and presented oral arguments in 403 cases. The government prevailed

in 340, or 90 percent, of the 382 cases decided by the various courts of appeals this year.

## Supreme Court Cases

During its October term, 1980, the Supreme Court decided seven federal tax cases on the merits.

The Court agreed with the government that an integrated miner-manufacturer's first marketable product, for purposes of computing gross income from mining under the proportionate profits method of determining the percentage depletion deduction, is cement, whether sold in bulk or in bags, rather than only cement sold in bulk.<sup>1</sup> The Court also sustained the validity of Treasury regulations providing that storage, distribution, and most sales costs are incurred subsequent to mining, and that such costs are therefore to be treated as nonmining costs for purposes of the proportionate profits method.

Ruling in favor of the taxpayer, the Court held that a lessee under a coal lease had an "economic interest" in the mineral in place, and was therefore entitled to the percentage depletion de-

duction, notwithstanding the fact that the lease was terminable by the lessor on 30 days' notice.<sup>2</sup>

The Court also agreed with the taxpayer that the value of meals and lodgings furnished to the crews of offshore drilling rigs did not constitute "wages" for purposes of withholding FICA and FUTA taxes.<sup>3</sup>

And the Court determined that the attorney-client privilege precluded the IRS from employing its summons power to obtain information provided to the corporate taxpayer's counsel by lower-echelon corporate employees. In so holding, the Court rejected the government's arguments that the privilege applied only to communications from members of the "control group" of company officers and that the "work product" doctrine did not apply in summons enforcement proceedings.<sup>4</sup>

Three cases were summarily decided by the Supreme Court in the government's favor. The Court upheld the constitutionality of amendments to the minimum tax which, as enacted, affected the taxation of transactions taking place prior to the enactment of the amendments.<sup>5</sup> The Court held that a cooperative hospital laundry and linen supply company (all of whose members were tax exempt) was itself not eligible for tax-exempt status under Section 501(c)(3) of the Internal Revenue Code.<sup>6</sup> The Court affirmed the judgment of the Tenth Circuit holding that the imposition of a Colorado property tax on a private contractor engaged to manage a nuclear weapons facility owned by the United States violated the federal government's constitutional immunity from state taxation.<sup>7</sup>

The government participated in three tax-related Supreme Court cases as *amicus curiae*. The arguments advanced by the government in two state taxation cases—that California's removal of property tax burdens on imported and exported goods in storage was constitutional,<sup>8</sup> and that California's "retaliatory" tax on out-of-state insurance was unconstitutional<sup>9</sup>—were rejected. The Court agreed with the government in an ERISA case, however, and held that pension benefits payable under a qualified plan could properly be offset by workmen's compensation benefits.<sup>10</sup>

## Appellate Decisions

The Division was responsible for a wide variety of important appellate decisions in the government's favor during fiscal 1981. For example, in what are among the largest cases ever handled by the Division, involving approximately \$1.1 billion, the District of Columbia Circuit held that the Secretary of the Treasury was not required to pay over to the treasuries of Puerto Rico and the Virgin Islands the excise tax collected on the sale in the United States of gasoline refined in those areas and that the United States was not required to pay to the Virgin Islands the customs duties on goods coming into the United States from the Virgin Islands.<sup>11</sup> The Fourth Circuit held that the State of Maryland was barred by 4 U.S. Code Section 113 from treating members of Congress,

who reside in that state in order to attend sessions of Congress, as domiciliaries or residents of Maryland for purposes of imposing state or local income taxes.<sup>12</sup>

The First Circuit, reversing the Tax Court, held that the taxpayer, a Harvard Law School student, could not deduct expenses for transportation between Boston and New York City, and for meals and lodgings in New York, where she held a job as a summer law clerk between her second and third years of law school.<sup>13</sup> The Fifth Circuit, also reversing the Tax Court, held that the manager of a clothing boutique could not deduct as an ordinary and necessary business expense the cost of the high fashion clothes she wore to work.<sup>14</sup> In a case of potentially far-reaching importance in the tax shelter field, the Fifth Circuit sustained the government's position that a nonrecourse loan entered into in a highly leveraged oil and gas investment did not constitute true debt for purposes of allowing the investors to claim losses, because the loan would not be repaid unless there was production from the oil and gas leases used as collateral for the loan.<sup>15</sup>

In a decision that will have a significant and positive impact on IRS' ability to utilize "John Doe" summonses in its national barter exchange audit program, the Third Circuit upheld the use of such a summons based upon an experienced revenue agent's testimony that the noncash barter transactions under investigation were inherently susceptible to tax error.<sup>16</sup>

In another important summons case, the Seventh Circuit set forth specific time rules and procedural guidelines for such cases arising in that Circuit, severely restricting pre-enforcement discovery.<sup>17</sup> The Ninth Circuit affirmed the imposition of sanctions on American business entities for failure to comply with summons enforcement orders, ruling that potential exposure to criminal penalties for possible violations of Swiss law did not justify a refusal to produce the financial records of Swiss subsidiaries that were stored in Switzerland.<sup>18</sup>

The Fifth Circuit decided two significant corporate tax cases for the government in the liquidation-reincorporation area, ruling that "substantially all" of the transferor corporation's assets had been acquired by the commonly owned transferee corporation, with the result that the assets distributed to the stockholders constituted "boot," taxable as a dividend incident to the reorganization.<sup>19</sup> In the partnership tax field, the Fifth Circuit rejected taxpayers' efforts to allocate partnership losses for tax purposes in a manner different from the allocation of profits, reaffirming the principle that tax loss allocations must follow the economic detriment of the loss itself.<sup>20</sup>

The Seventh Circuit affirmed the criminal conviction of the former Attorney General of Illinois for filing a false income tax return for 1972; it was established that he had diverted substantial amounts of campaign funds and political contributions to his personal use, but had failed to report these items on his income tax returns.<sup>21</sup> The Seventh Circuit also affirmed the conviction of a prominent Chicago tax attorney for conspiring to impede and impair the assessment and collection of income and gift taxes.<sup>22</sup>



Several Division victories in the circuit courts are now pending in the Supreme Court. For example, the Eighth Circuit, disagreeing with the Fourth and Sixth Circuits, agreed with the government that the donor of appreciated property in a "net gift" arrangement, where the donee agrees to pay the donor's gift taxes as a condition of the gift, realizes income (taxable as capital gains) to the extent the taxes exceed the donor's basis in the property.<sup>23</sup>

The Ninth Circuit, in conflict with the Eighth Circuit, held that the timeliness of a disclaimer for gift tax purposes should be measured from the time of the original transfer creating the disclaimed future interest, not from the time the interest actually ripens into possession and enjoyment.<sup>24</sup> The Fourth Circuit sustained the government's position that a school's racially discriminatory policies, grounded on religious beliefs, provided a proper basis for the revocation of tax-exempt status under Section 501(c)(3) of the Internal Revenue Code.<sup>25</sup>

## Criminal Tax

The Division, in order to ensure a consistent and uniform national prosecution policy, is responsible for the review and supervision of all cases involving criminal violations of the Internal Revenue Code. This responsibility includes the functions of case review and supervision; grand jury activities; review and decision on immunity requests; and case preparation and trial.

The Division's review function begins after an investigation by the IRS Criminal Investigation Division of possible violations of the internal revenue laws has resulted in a recommendation for prosecution by the appropriate IRS District Director and District Counsel. The investigative report and exhibits are forwarded to the Tax Division's Criminal Section for a decision on prosecution, except in those criminal tax cases, such as excise tax offenses, which are directly referred by the IRS to the appropriate U.S. Attorney for prosecution.

The evidence is analyzed, and a detailed written recommendation is made to the Assistant Attorney General on whether the case warrants prosecution and, if so, what criminal tax charges should be brought. During fiscal 1981, Division attorneys prepared 1,572 criminal prosecution memoranda, involving 2,119 potential defendants. Prosecution was declined as to 531 potential defendants.

Under the Division's new case review procedure, all criminal tax cases received from the IRS are promptly screened and divided into categories of complex and noncomplex cases. Noncomplex cases meeting basic criteria are authorized for prosecution and forwarded to U.S. Attorneys within a few days, and are reviewed by the U.S. Attorney within three months of receipt. Should the U.S. Attorney determine that prosecution is not warranted, the case is returned to the Division so the Assistant Attorney General may either decline prosecution or elect to send Division attorneys to prosecute the case. During fiscal 1981, 197 non-

complex cases were transmitted to U.S. Attorneys under this new procedure. Complex cases and cases with sensitive issues continue to receive full review by the Division.

After prosecution is authorized by the Division, the file containing the prosecution memoranda and IRS reports and exhibits is forwarded to the appropriate U.S. Attorney, with the request that an indictment be sought or that an information be filed. The Division sets forth in its letter of transmittal the charges that are to be brought and any special instructions applying to the case. Regular followup reporting is required to keep the Department abreast of the prosecution through indictment, plea or trial, and final disposition.

All applications for immunity from prosecution in connection with criminal tax cases are extensively reviewed by Division attorneys before they are forwarded to the Assistant Attorney General for final action. At the beginning of fiscal 1981, 15 immunity applications were pending; during the year, 289 were received by the Division from U.S. Attorneys and the various divisions of the Department of Justice. A total of 210 immunity applications were approved, 72 were denied or withdrawn, and 22 were pending at the end of the year.

The Tax Division and the Criminal Division coordinate closely in special enforcement cases, including criminal tax cases involving organized crime figures and activities. The Criminal Division consults with the Tax Division on the tax aspects of matters developed through Criminal Division investigations, and the Tax Division is engaged in a joint effort with the Criminal Division's Fraud Section to halt the use of fraudulent tax shelters. In addition, in fiscal 1981, a special group, designated the Tax Enforcement Narcotics Unit, was established within the Tax Division's Criminal Section to handle appropriate matters referred for grand jury investigation by the IRS. The special unit was formed as part of a program designed and implemented in collaboration with the Criminal Division's Narcotic and Dangerous Drug Section, whose attorneys will also participate, to handle potential criminal cases involving high-level narcotics traffickers.

Experienced tax prosecutors in the Tax Division are also assigned to maintain liaison with each of the Criminal Division's Organized Crime Strike Forces in major cities throughout the country. These procedures enable the Division to supervise criminal tax matters arising in racketeering cases and to apply to these cases the same high evidentiary and policy standards that exist in all other criminal tax cases. During fiscal 1981, the Division received 401 special enforcement cases (an increase of 42 percent over fiscal 1980), 97 of which involved narcotics traffickers.

U.S. Attorneys and the various strike forces continue to request the assistance of Division attorneys in grand jury investigations, trial preparation, and in the conduct of criminal trials. In addition, specialists from the Division often directly handle investigations and cases of national importance, including cases developed under the Attorney General's drive on organized crime

and racketeering—which are generally of great complexity and have ramifications beyond the borders of a federal judicial district or state. During fiscal 1981, the Criminal Section received 122 new trial assignments, 20 new grand jury investigations, and 60 grand jury presentments.

The Division received 1,928 new criminal tax cases. During the year, 1,785 new indictments or informations were filed. The total docket of pending criminal tax cases at the close of fiscal 1981, including those in the hands of U.S. Attorneys and in the courts of appeals, was 4,424. The Division handled 167 criminal tax appeals this year.

Convictions were obtained in 95 percent of all criminal tax cases prosecuted. Of 1,575 businesses or persons prosecuted for federal tax violations, a total of 1,494 defendants were convicted. Most were found guilty on pleas of guilty or *nolo contendere* (accepted over the Department's continued objection to *nolo* pleas). A total of 363 criminal tax cases were tried, and the conviction rate after trials was 77.7 percent. Trial attorneys from the Division prosecuted 67 cases, obtaining convictions in 62 of them.

In fiscal 1981, criminal tax convictions took place in almost every state and included defendants from a full range of occupations and social positions. They included a bank director in Michigan, an unemployed heir in Florida, a Mississippi tavern owner, a Florida tax return preparer, a Texas pornographic theater owner, a captain in the New York Department of Corrections, a West Virginia ophthalmologist, a California massage parlor owner, a Texas doctor of osteopathic medicine, an Oregon attorney, a West Virginia coal mine operator, and a New York discotheque operator. In addition, those convicted included a number of so-called "tax protesters" and promoters of fraudulent tax shelter schemes.

## Civil Tax Cases

Civil cases account for approximately 85 percent of the Division's tax work. In the fiscal year, 4,493 civil tax suits and tax related actions (excluding appeals), involving more than \$1.36 billion, were instituted. Taxpayers instituted 3,886 suits involving more than \$1.28 billion in tax liabilities and tort claims; 1,535 of these were bankruptcy suits. The government filed 607 suits involving approximately \$76.5 million.

## Trial Court Proceedings

In fiscal 1981, Division attorneys tried 348 cases in lower courts: 310 in federal district and state courts and 38 in the Court of Claims. Division attorneys, in active preparation for trial, also took part in 2,405 discovery actions and 1,563 pretrial appearances and proceedings.

Civil cases decided at the trial level this year involved a wide variety of issues and transactions. The government prevailed in 908 of the 1,118 cases decided by the trial courts.

## Trial Court Cases

The Civil Trial Sections (Northern, Southern, Central, Western, and Court of Claims) represent the government in refund suits brought by taxpayers to recover taxes alleged to have been erroneously or illegally assessed and collected. Except for the Court of Claims Section, they also represent the government in other types of civil tax-related suits in federal and state courts.

Several civil cases litigated by the Division during fiscal 1981 involved issues concerning the tax effect of transactions of exempt organizations as well as the status of individuals and organizations claiming to be tax exempt. For example, in a refund suit in which the plaintiffs claimed a charitable contribution for money spent to support their son while he was doing missionary work for the Mormon Church, the Utah District Court granted the government's motion for summary judgment because the payments were made to benefit a specific individual and thus lacked the quality of indefiniteness necessary to qualify as "charitable."<sup>26</sup> The Court of Claims determined that the Disabled American Veterans had realized unrelated business taxable income from the rental of its list of contributors.<sup>27</sup> Favorable decisions were also obtained by the government in actions brought by taxpayers pursuant to Section 7428 of the Internal Revenue Code for declaratory judgments that they were entitled to tax-exempt status under Section 501(c)(3) of the Code. The Court of Claims upheld the government's retroactive revocation of a law school's tax-exempt status because a portion of the net earnings of the institution inured to the benefit of its founder and his family.<sup>28</sup> The Colorado District Court rejected the claim of a "family church" for tax-exempt status because of the alleged church's failure to demonstrate that it was operated for other than the private interests of its members.<sup>29</sup> The District Court of Maryland rejected the claim for exemption from self-employment tax of a dentist, who is also an ordained minister and who asserted that his work constituted a religious calling, since the taxpayer's income was clearly derived from the practice of dentistry without regard to the alleged motivation behind his work.<sup>30</sup>

The government also fared well in several refund cases in areas affecting insurance companies and other corporate or business entities. The Northern District of Illinois held that the taxpayer was entitled to neither an expense deduction nor an amortizable bond premium deduction where, pursuant to a guarantee it made at the time the bonds were originally sold by its subsidiary, it exchanged its stock, with a fair market value well in excess of the face value of the bonds, for the bonds.<sup>31</sup> The Court of Claims ruled that the taxpayer's addition to its loss reserves did not qualify either as an addition to a bad debt reserve under Section 166(g) of the Internal Revenue Code or as an addition to an incurred-but-not-reported loss reserve under Section 832.<sup>32</sup> In the first reported decision under Section 832(e), a North Carolina District Court held that a company writing mortgage guaranty insurance, which is allowed a deduction in the amount it is required by state



law to set aside in a loss reserve to the extent that it purchases "tax and loss bonds" equal to the tax benefit attributable to the deduction, could not compute the tax benefit by allowing a deduction for estimated income taxes at the time of the bond purchase.

Thus, although a deduction for state income taxes actually paid would be allowed during a later taxable year, the tax benefit for the current year is properly computed only by reference to deductions actually taken in a previous tax year, which permits national uniformity in the computation of the tax benefit.<sup>33</sup>

Another decision in the government's favor by the Court of Claims involved the accrual method of accounting, the court concluding that the taxpayer insurance company had to include in income interest on policy loans that was due and payable in advance but not paid or earned during the tax year.<sup>34</sup>

The Court of Claims also sustained the government's position that, in determining "gross income from mining" for depletion purposes, coal mine owners were required to exclude costs incurred in transporting coal from their mines to the processing facility owned by a third party.<sup>35</sup> The court concluded in another case that the taxpayer was not allowed to expense or depreciate so-called excess restoration costs, which raise taxpayer's cost above fair market value, for antique automobiles, motorcycles, and airplanes displayed in its Reno, Nevada, museum, because the costs were capital in nature.<sup>36</sup>

Litigation under the Freedom of Information Act and damage suits continued to increase. The Freedom of Information Act is often utilized as a means of seeking to obtain government files in criminal matters which are not yet concluded or related civil matters which are pending. The government successfully defended a suit which sought access to prosecution memoranda, prepared within the Division's Criminal Section and the prosecuting U.S. Attorney's Office, which discussed evidence and defenses and contained recommendations regarding potential criminal prosecution of the taxpayer for violations of the Internal Revenue Code.

Although the criminal case was concluded and the taxpayer claimed that the information sought would be helpful in contesting a substantial proposed civil tax assessment, the district court ruled that the taxpayer could not have access to the documents, which are exempt from disclosure under Exemption b(5) of the Freedom of Information Act, at least as long as there is an open civil case.<sup>37</sup>

In another Freedom of Information case, a former IRS special agent, who had been disciplined on account of the methodology he employed in an investigation, sought access to the IRS file, allegedly to show that all of his actions were approved by his superiors. The district court granted the government's motion for summary judgment and held that the documents were exempt from disclosure under Freedom of Information Act Exemption b(3).<sup>38</sup> One action against an IRS employee based upon the alleged unauthorized disclosure of tax return information resulted

in a jury verdict for plaintiff of \$1,000.<sup>39</sup> The amount awarded is the statutory minimum, and the jury rejected a claim for punitive damages. In addition, the judgment is being appealed on the ground, among others, that the disclosure was already a matter of public record. The government prevailed in a Privacy Act suit seeking \$8 million in damages for an alleged illegal disclosure by IRS personnel.<sup>40</sup>

In a decision affecting the tax liability of more than 300,000 Utah residents who received rebates under a state law entitling homeowners and renters to a rebate based upon the amount of real property tax or rent paid during the year, the district court upheld an IRS ruling that homeowners who itemized deductions had to reduce the amount of their property tax deductions by the amount of the rebate.<sup>41</sup>

A district court in Florida dismissed an action under Section 7429 of the Internal Revenue Code by an alien seeking judicial review of a termination assessment against him in the amount of \$18 million. The court agreed with the government's argument that the taxpayer was not a resident of any judicial district, as specifically required for purposes of venue under Section 7429, and accordingly dismissed the action for improper venue in a decision which would preclude judicial review of termination or jeopardy assessments by nonresident aliens.<sup>42</sup>

In the summons enforcement area, the government continued to be successful in compelling the production of reports to management and tax reserve memoranda prepared for corporate taxpayers by their independent auditors in connection with audits of the taxpayers' financial statements.<sup>43</sup>

The government filed suit to enjoin an individual from promoting the sale of a so-called "offshore" double trust scheme, wherein taxpayers sell their paychecks or services to foreign trusts exempt from federal taxation and attempt to avoid any income taxation when second-tier trusts distribute 90 percent of the income back to the taxpayers as alleged gifts.

The district court granted the government's motion for a preliminary injunction and ordered the defendant to refrain from selling, promoting, or servicing any such scheme or device, from representing that any such device would reduce federal tax liability, and from preparing any return on which such a device is used to reduce a taxpayer's federal tax liability.<sup>44</sup>

The Independent Petroleum Association of America and several domestic oil producers, joined by the States of Louisiana and Texas as intervenors, have challenged the constitutionality of the Crude Oil Windfall Profit Tax Act of 1980, which Congress designed to raise more than \$200 billion in revenue over the period the tax is in effect. The government's motion to dismiss the suit on jurisdictional grounds was denied.<sup>45</sup> Another suit seeking a declaratory judgment that the Act is unconstitutional has been dismissed.<sup>46</sup>

The Civil Trial Sections have also been involved in significant intergovernmental immunity cases. For example, the government filed suit against the State of Tennessee and City of Oak



Ridge for a judgment declaring that a newly enacted state tax imposed on contractors for the privilege of producing enriched uranium unconstitutionally discriminates against the United States, whose contractor has the only uranium enrichment plant in the state.<sup>47</sup>

A California district court enjoined the State of California from collecting sales taxes with respect to purchases and leases of tangible personal property made by incorporated federal instrumentalities.<sup>48</sup>

The government is seeking declaratory and injunctive relief against the State of Texas relative to that state's efforts, including the imposition of taxes on purchases outside the state, to force the Department of Navy to procure alcoholic beverages for its clubs only from Texas vendors;<sup>49</sup> a preliminary injunction barring implementation of a recent South Carolina statute purporting to forbid the procurement of alcoholic beverages by the federal armed services from sellers not licensed to wholesale those beverages within the State of South Carolina has already been obtained.<sup>50</sup>

The government has successfully resisted an attempt by the State of Utah to obtain, by enforcement of its abandoned property or escheat laws, all unclaimed and unpaid federal tax refunds allegedly owing to taxpayers whose last known addresses were in that state.<sup>51</sup> The government's motion to dismiss a similar suit brought by the State of New York is still pending.<sup>52</sup>

## Compromise of Civil Tax Cases

During fiscal 1981, the Division took final action on 1,077 settlement offers in matters in litigation, of which 885 (approximately 82 percent) were approved and 192 (approximately 18 percent) were rejected. The following table summarizes final actions taken on settlement offers during the year:

	Accepted	Rejected	Total
Associate Attorney General .....	60	—	60
Assistant Attorney General .....	26	1	27
Chief, Review Section .....	312	28	340
Chiefs of other Sections .....	487	163	650

Of the 86 settlements approved under the authority of the Associate Attorney General and the Assistant Attorney General, 54 involved refunds or concessions in excess of \$200,000, which, pursuant to Section 6405 of the Internal Revenue Code, were transmitted to the Joint Committee on Taxation of the Congress.

## Review Section

The Review Section appraises settlement offers in light of litigating potential and policy considerations, giving particular attention to settlements that are significant in terms of the legal issues or amount of money involved. The section takes final action on those settlements within its redelegated authority, and advises the Assistant Attorney General or his delegate on settlements which require final action at a higher level within the Division or Department. It is active in resolving disputes between the

litigating sections and the IRS so that the final action taken is generally in conformity with the views of the client agency. During fiscal 1981, the section processed 447 settlement offers.

The section uses the knowledge obtained in processing offers in significant cases to identify issues on which development, coordination, or implementation of policy is needed. In fiscal 1981, for example, the section did considerable work concerning the effect of collateral estoppel in federal tax cases. The section also monitors and prepares reports concerning pending or proposed legislation in which the Division has an interest or on which the Division has been asked to comment.

During fiscal 1981, substantial efforts were expended on: Legislation to modify procedures for challenging third-party recordkeeper summonses issued by IRS; legislation to revise aspects of the Internal Revenue Code which deal with bankruptcy, insolvency, and discharge of indebtedness (enacted as the Bankruptcy Tax Act of 1980); legislation to make technical corrections to the Bankruptcy Code enacted by P.L. 95-598; bills to allow awards of attorneys' fees against the government; revision of the Criminal Code; legislation to restructure the federal appellate court system and to create a court of appeals for the Federal Circuit; and legislation to amend the Federal Tort Claims Act to permit the substitution of the United States for federal officers and employees as parties to judicial proceedings where they are being sued in their individual capacities for damages on account of alleged torts. The section also devoted substantial time and effort to: implementation of the Equal Access to Justice Act, P.L. 96-481, by the Division and IRS; the Department's Equal Access to Justice Act Task Force; and the intradepartmental committees which advise the Department's representatives on the Advisory Committees of the Judicial Conference of the United States on Civil and Criminal Rules.

## Accomplishments and Initiatives in Fiscal 1981

In fiscal 1981, there were many significant government victories in tax cases, but the fair and effective representation of the government in every case was the Tax Division's most important achievement. In the Supreme Court, the government prevailed in four of seven tax cases. In the courts of appeals, the government's position was upheld in 340 of 382 decided cases, a success rate of 90 percent. In the various trial courts, the government won 908 of 1,118 decided cases, a success rate of 81 percent. The Division obtained 1,494 convictions in criminal cases. Each courtroom victory represents a savings or recovery of federal revenue, but the significance of the Division's achievement lies in the thoughtful work its attorneys have performed in the substantial volume of litigated cases, which has further contributed to the development of sound interpretations of the revenue laws and which should affect future judicial and administrative determinations in tax matters.

The charts that follow depict the work of the Division over the last several years. The volume of the Division's work has increased steadily over the past five years, from 15,446 new cases in fiscal 1977 to 19,534 during fiscal 1981. The variety and complexity of the Division's work has also increased, reflecting changes in revenue and bankruptcy laws, the repeated emphasis on combating white-collar and organized crime, the proliferation of multimillion dollar tort suits and Freedom of Information Act and Privacy Act litigation, the continuing resistance to revenue laws by the tax protester movement, and the development of more sophisticated tax shelter schemes.

The ability of the Division to successfully meet the increasing caseload demands is due to the commitment of its staff and to continuing efforts to improve techniques and systems.

Special Litigation Counsel handle several nationally significant civil cases involving large dollar amounts, are regularly consulted by Division attorneys in a wide variety of other cases, and participate in complex appellate and criminal proceedings. All Division attorneys receive reports on new and proposed legislation, are invited to internal training sessions on federal tax litigation, and have the opportunity to develop expertise in computerized legal research.

The Division sponsored guest lectures on selected topics in evidence and trial advocacy. The Criminal Section developed new case review procedures, conducted Criminal Tax Institutes for attorneys in the Criminal Division and for U.S. Attorneys, and established its Tax Enforcement Narcotics Unit. Civil trial attorneys in the Division compiled a detailed index of all reported cases in the area of IRS summons enforcement and arranged to incorporate the index into the Department's JURIS computer research system.

The Division's computerized case management system has been developed and improved over the last several years in an ef-

fort to help meet the demands imposed by the volume and sophistication of current tax litigation.

In the past, the Division concentrated on better case tracking and retrieval capabilities and a case-weighting system to assist in assigning and monitoring cases. During fiscal 1981, the system progressed significantly in three main areas: implementation of a new case activities and events system, which is a further advancement in the system's capability to monitor cases, including a superior method of displaying critical dates and activities; design and initiation of a judgment and collection system, which, when fully implemented, will provide immediate access to data to establish complete accounting control for civil judgments and claims, both liquidated and unliquidated, and statistics upon which to evaluate the success of collection efforts; and development of procedures to ensure timely data input on the system throughout the Division.

The Division engages in a continuing effort to coordinate its activities with those of its primary client—IRS. During fiscal 1981, the Division worked closely with Treasury and IRS officials in connection with several items of proposed legislation—including a proposal that would allow award of attorneys' fees in federal tax cases—and with IRS officials in developing a coordinated program for dealing with certain aspects of the tax protest movement.

The following tables compare the Divisions' work production and results during fiscal 1981 with prior years:

	(In Percent)				
	1977	1978	1979	1980	1981
Government wins .....	86	87	82	88	86
Criminal convictions .....	86.4	94.8	94.9	95	95

### Comparison of Work Received and Closed

	1977	1978	1979	1980	1981
<b>Received:</b>					
Civil cases (including appeals) .....	4,304	4,691	4,874	4,928	5,239
Criminal cases (including appeals) .....	2,699	2,939	2,945	2,523	2,093
Total cases .....	7,003	7,630	7,819	7,451	7,332
<b>Liens .....</b>	6,455	6,016	5,855	6,430	7,468
<b>Miscellaneous .....</b>	1,988	3,676	3,715	3,752	4,734
Total miscellaneous .....	8,443	9,692	9,570	10,182	12,202
<b>Total .....</b>	15,446	17,322	17,389	17,633	19,534
<b>Closed:</b>					
Civil cases .....	3,830	4,283	4,421	4,515	4,585
Criminal cases .....	2,395	2,529	2,364	2,761	2,151
Total cases .....	6,225	6,812	6,785	7,276	6,736

Continued on next page

### Comparison of Work Received and Closed (Continued)

Liens.....	6,455	6,016	5,855	6,430	7,468
Miscellaneous.....	1,816	2,749	3,691	3,446	4,212
Total miscellaneous.....	8,271	8,756	9,546	9,876	11,680
Total.....	14,496	15,577	16,331	17,152	18,416

### Comparative Workload Summary

	1977	1978	1979	1980	1981
Pending, beginning of fiscal year.....	9,755	10,705	12,450	13,208	13,689
Received.....	15,446	17,322	17,389	17,633	19,534
Closed.....	14,496	15,577	16,631	17,152	18,416
Pending, close of fiscal year.....	10,705	12,450	13,208	13,689	14,807

### Work Production

	1977	1978	1979	1980	1981
Pleadings prepared.....	5,647	6,205	5,473	5,524	5,835
Discovery action.....	2,879	2,567	2,377	2,587	2,405
Pretrials.....	998	927	809	742	622
Trials and appearances.....	904	1,152	1,144	1,151	1,097
Appellate arguments.....	394	340	328	519	403
Briefs prepared.....	2,213	2,097	2,245	2,104	1,979
Legal memos.....	5,142	6,647	5,342	6,325	5,749

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- (1) *Commissioner v. Portland Cement Co. of Utah*, 49 U.S.L.W. 4189, March 3, 1981.
- (2) *United States v. Swank*, 49 U.S.L.W. 4520, May 18, 1981.
- (3) *Rowan Companies, Inc. v. United States*, 49 U.S.L.W. 4646, June 8, 1981.
- (4) *Upjohn Co. v. United States*, 449 U.S. 383 (1981).
- (5) *United States v. Darusmont*, 449 U.S. 292 (1981).
- (6) *HCSC-Laundry v. United States*, 49 U.S.L.W. 3608, February 23, 1981.
- (7) *Jefferson County, Colorado, et. al. v. United States*, 49 U.S.L.W. 3616, February 23, 1981.
- (8) *Sears, Roebuck and Co. v. County of Los Angeles, et al.*, affirmed by equally divided court, 449 U.S. 1119 (1981).
- (9) *Western and Southern Life Insurance Co. v. State Board of Equalization of California*, 49 U.S.L.W. 4543, May 26, 1981.
- (10) *Alessi v. Raybestos-Manhattan, Inc.*, 49 U.S.L.W. 4503, May 18, 1981.
- (11) *Commonwealth of Puerto Rico v. Blumenthal; Virgin Islands v. Blumenthal*, 642 F. 2d 622, 641 (1980), cert. denied, 49 U.S.L.W. 3863, May 18, 1981.
- (12) *United States v. State of Maryland and Louis L. Goldstein*, 636 F. 2d 73 (1980), cert. denied, 49 U.S.L.W. 3882, May 26, 1981.
- (13) *Hantzis v. Commissioner*, 638 F. 2d 248 (1981), cert. denied, 49 U.S.L.W. 3954, June 22, 1981.
- (14) *Pevsner v. Commissioner*, 628 F. 2d 467 (1980).
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- United States v. Salkin; United States v. Anderson*, 48 A.F.T.R. 2d 81-5839 (1981).
- (18) *United States v. Vetco, Inc.*, 644 F. 2d 1324 (1981).
- (19) *Smothers v. United States*, 642 F. 2d 894 (1981); *Simon v. Commissioner*, 644 F. 2d 339 (1981).
- (20) *Boynton v. Commissioner*, 48 A.F.T.R. 2d 81-5496 (1981); *Holladay v. Commissioner*, 48 A.F.T.R. 2d 81-5501 (1981).
- (21) *United States v. William J. Scott*, decided September 18, 1981.
- (22) *United States v. Baskes*, 640 F. 2d 48 (1980), cert. denied, 101 S. Ct. 1368, February 23, 1981.
- (23) *Diedrich v. Commissioner*, 643 F. 2d 499 (1981); *United Missouri Bank of Kansas City, N.A. v. Commissioner*, 643 F. 2d 499 (1981), cert. granted, 50 U.S.L.W. 3244, October 5, 1981.
- (24) *Jewett v. Commissioner*, 638 F. 2d 93 (1980), cert. granted, 49 U.S.L.W. 3893, June 1, 1981.
- (25) *Goldsboro Christian Schools, Inc. v. United States*, affirmed by unpublished order February 24, 1981; *Bob Jones University v. United States*, 639 F. 2d 151 (1981), cert. granted, 50 U.S.L.W. 3278, October 13, 1981.
- (26) *White v. United States*, Civil No. C-80-0083-J (Utah, May 15, 1981).
- (27) *Disabled American Veterans v. United States*, 48 A.F.T.R. 2d 81-5047 (Ct. Cl., 1981).
- (28) *John Marshall Law School v. United States*, 48 A.F.T.R. 2d 81-5340 (Ct. Cl., 1981).
- (29) *Basic Unit Ministry of Alma Karl Schurig v. United States*, 81-1 U.S.T.C., para. 9188 (Colo. 1981).
- (30) *Seward v. United States*, No. J-80-1370 (Md., May 27, 1981).
- (31) *National Can Corp. v. United States*, 48 A.F.T.R. 2d 81-5566 (N.D. Ill. 1981).



- (32) *Maryland Savings-Share Insurance Corp. v. United States*, 47 A.F.T.R. 2d 81-825 (Ct. Cl. 1981).
- (33) *AMIC Corp. v. United States*, Civil No. 77-155-CIV-5 (E.D. N.C., September 18, 1981).
- (34) *Life Insurance Co. of Georgia v. United States*, 48 A.F.T.R. 2d 81-5041 (Ct. Cl. 1981).
- (35) *Rowe v. United States*, 48 A.F.T.R. 2d 81-5554 (Ct. Cl. 1981).
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- (37) *Firestone Tire & Rubber Co. v. Department of Justice*, No. 80-C-2616 (D. D.C., September 18, 1981).
- (38) *Jaffe v. Internal Revenue Service*, 47 A.F.T.R. 2d 81-1109 (S.D. Fla., 1981).
- (39) *Rodgers v. Hyatt*, 81-1 U.S.T.C., para. 9218 (Colo. 1981).
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- (44) *United States v. Landsberger*, Civil No. 3-81-313 (Minn., July 27, 1981).
- (45) *Independent Petroleum Association of America v. United States*, Civil No. C-80-0302 (Wyo., August 26, 1981).
- (46) *Energy Consumers and Producers Assn. v. United States*, Civil No. 80-132-C (E.D. Okla., June 18, 1981). A similar action by the State of Oklahoma is also pending. See *State of Oklahoma v. United States*, Civil No. 81-858 (W.D. Okla.).
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- (48) *United States v. California State Board of Equalization*, Civil No. CV 81-1588-R (C.D. Cal., August 26, 1981).
- (49) *United States v. State of Texas*, Civil No. A-79-CA-0079 (S.D. Tex.).
- (50) *United States v. State of South Carolina*, Civil No. 81-1867-9 (S.C., 1981).
- (51) *State of Utah v. United States*, No. NC 80-0079-J (Utah, May 29, 1981).
- (52) *In re Petition of Robert Abrams, Attorney General of the State of New York*, No. 40008/80 (S. Ct. N.Y.).

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## Land and Natural Resources Division

**Carol E. Dinkins**  
**Assistant Attorney General**

The Land and Natural Resources Division represents the United States, its agencies, and officials in matters relating to public lands and natural resources, Indian lands and native claims, wildlife and fishery resources, and environmental quality. The client agencies served by the Division include the Departments of Agriculture, Commerce, Defense, Energy, Interior, and Transportation, as well as the Environmental Protection Agency (EPA).

Although the Division's responsibilities are varied, its central goal is to provide first-rate legal representation in the most effective and efficient manner possible. To assure efficiency, a reorganization plan for the Division was developed and implemented this year. The number of litigating sections was reduced from 12 to nine, and litigation responsibility among the sections reallocated on a more functional basis. The Division should now be able to instill a greater degree of continuity in its operations, reduce administrative and overhead costs, and improve management and accountability.

In virtually all matters, the Division represents other agencies and departments and, as a result, emphasis is placed on the development and maintenance of good client relations. This year, the Division sought to strengthen ties with these agencies by holding regularly scheduled meetings with agency lawyers and policy personnel. Matters in litigation are reviewed, policies and programs are discussed, and problem areas are identified and resolved.

Several program-specific initiatives have been initiated in the past year. In defensive matters, the Division has assumed a more aggressive litigating posture in raising questions regarding the justiciability of an issue and the propriety of attorney fees has been raised. In enforcement actions, the Division has concentrated on obtaining results. Innovative settlements have been reached in cases where final judgments were years away. In keeping with the fundamental principles of our federal system, the Division has established a policy of ensuring that state and local officials are promptly notified of any pending action which might impact their programs.

At the end of fiscal 1981, the Division had 328 employees: 177 attorneys and 151 support staff.

### Public Lands

The federal government owns or controls approximately 750 million acres of land—a figure equaling nearly one-third

of the land mass of the United States. Since 1909, the Division has been responsible for representing the United States in disputes relating to ownership, use, and management of these public lands. Today, a large part of the Division's resources is dedicated to fulfilling this historic mission.

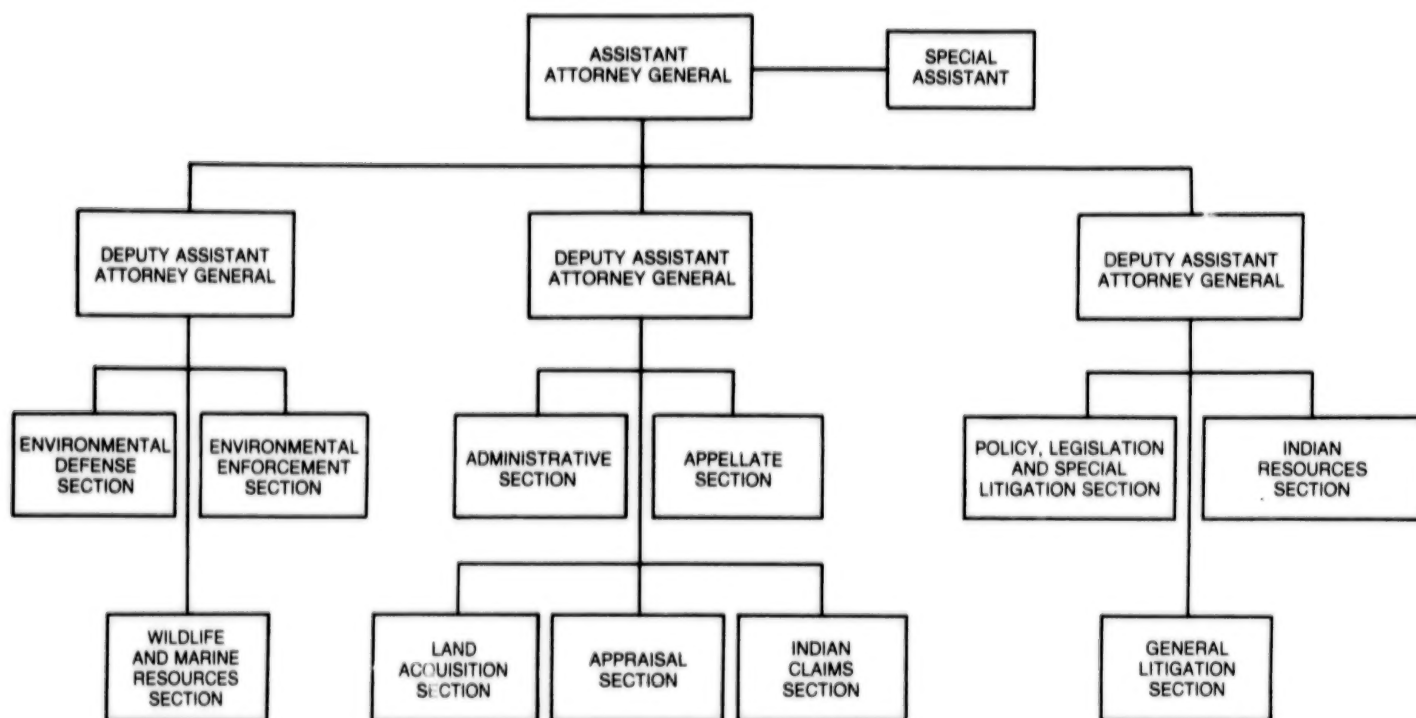
### Title and Land Use

Much of the Division's public lands docket relates to questions of title and use. These cases include quiet title actions; surveying and boundary dispute cases, including cases related to river movement where title shifts by avulsion or accretion; trespass actions against those improperly using federal land; defense of rulings by the Interior Board of Land Appeals as to location and ownership of minerals and mining claims; defense of broad federal programs on grazing rights and use of the national forests; defense of agency actions granting or denying access across public lands (particularly important in the checkerboard ownership areas of the West); representation of the United States in state condemnation actions in which the United States may have a title or monetary interest; and grants of rights-of-way across federal lands.

An important case this year was *State of Nevada ex rel. Nevada State Board of Agriculture v. United States*, an action filed in Nevada to secure the rescission of a moratorium on desert land entries in the state. The state sought to establish that the United States holds the public lands in Nevada in trust for the people of the state and that Congress may not provide for permanent federal retention of any of such lands. The court dismissed the action in a reaffirmation of the doctrine that the power of Congress over the public lands is without limitations. The court expressly rejected the plaintiff's contention that the "equal footing" doctrine of the Constitution required recognition of rights in the State of Nevada to unappropriated land within its borders comparable to those enjoyed by the original 13 states upon creation of the Union. In essence, the court held that the "equal footing" doctrine applies to political rights and to sovereignty but not to "economic stature," including control and disposition of the public lands.<sup>1</sup>

The most significant recent legislative pronouncement in the area of federal land use and management is the Federal Land Policy and Management Act. During the year, the Division was involved in several cases that have clarified the

## Land and Natural Resources Division



Act. Various provisions of the Act were deemed constitutional in *Western Mining Council v. Watt*, including provisions relating to local law enforcement, recordation of unpatented mining claims, and retention of public lands in federal ownership.<sup>2</sup> Moreover, the Forest Service can regulate the surface use of national forest lands, including mining; it may enforce its regulations without first exhausting administrative remedies in Interior proceedings pertaining to the validity of the mining claim.<sup>3</sup> Further, Interior may properly require additional information reasonably related to the purposes of the Act's recordation system for unpatented mining claims.<sup>4</sup> Finally, the Act was adjudged not to have affected a reservation of water rights for unreserved public lands managed by Interior.<sup>5</sup>

The need to clarify the offshore boundary of federal lands has become extremely important with the development of oil and gas resources. The Division has been involved in a number of Supreme Court original actions to determine the respective rights of the coastal states and the federal government to offshore lands and the oil and gas beneath such lands. A final decree was entered by the Supreme Court in *United States v. Louisiana*.<sup>6</sup> Final accountings and the payment of accumulated revenues remain to be completed. At issue in *United States v. Alaska*,<sup>7</sup> are oil-rich lands in the Beaufort Sea, north of Alaska. The case has progressed through a first hearing. The United States and Alaska have filed post-hearing briefs before the Special Master. The Inupiat Indians moved to intervene in the case, claiming that they own the

United States outer continental shelf into the Arctic Ocean. This is now being considered by the Master. California filed an action<sup>8</sup> against the United States to determine title to accretion of coastal property now belonging to the federal government. A partial settlement was reached in the Massachusetts boundary case<sup>9</sup> with agreement on the coastal limits in Massachusetts Bay, Buzzards Bay, and parts of Nantucket Sound. The Rhode Island boundary case<sup>10</sup> has proceeded for trial, scheduled for November 1981.

### Land Acquisition and Condemnation

Central to the Division's public lands responsibility is its land acquisition and condemnation work. The Division, through the Land Acquisition Section, initiates and prosecutes condemnation proceedings in the U.S. district courts for the acquisition of lands necessary for public use. Condemnation proceedings are instituted pursuant to the sovereign power of the eminent domain, as codified in the General Condemnation Act, 40 U.S. Code 257, the Declaration of Taking Act, 40 U.S. Code 258a, and other statutes authorizing the acquisition of land by condemnation.

Condemnation proceedings are initiated by the Division upon application by federal agencies authorized by law to acquire land for public purposes. Acquisition by condemnation is the means of last resort, as acquiring agencies are required by law, to the greatest extent practicable, to make every reasonable effort to acquire property by negotiation before requesting condemnation. The Division handles land



acquisition proceedings for the Departments of Agriculture, Defense, Energy, Interior, and Transportation, and the General Services Administration.

Condemnation proceedings often involve issues regarding the authority of the United States to condemn the property or the right of possession to the property. The dispute also frequently centers on the question of just compensation. Trial of the issue of just compensation often involves difficult and complex valuation problems because 1) The unusual character of the estate taken (e.g., flowage easement, temporary construction easement, scenic easement, subsurface fee, subordination of minerals, and occasionally a mix of several different estates in a single property); 2) or the character of the property in suit. Properties involved in litigation include industrial facilities, office buildings, farms, railroad facilities, timberland, swamp, mountaintops, historic buildings, islands, and properties containing such mineral deposits as gold, coal, oil, gas, peat, oil shale, limestone, salt, clay, sand, and gravel.

Of particular significance are the Redwood National Park expansion cases. By P.L. 95-250, Congress authorized the expansion of the Park and condemned approximately 48,000 acres—for which \$320 million has been deposited with the court and of which \$318,303,500 has been distributed among three large timber companies<sup>11</sup> and \$1,696,500 has been distributed among 15 small ownerships. Most of the small ownerships have been settled. The three cases involving large timber companies are not expected to be set for trial until the latter part of 1983.

The largest land acquisition program in terms of acreage and number of tracts is the Big Cypress National Preserve program, a project of the National Park Service. This project encompasses more than 570,000 acres of land, comprising some 45,000 to 75,000 individual tracts, in southern Florida. Land acquisition for the Preserve began in 1976, and there are presently about 5,800 tracts in pending condemnation actions. This year, the Fifth Circuit Court of Appeals denied petitions for mandamus which claimed that summary calendar trials in 1979 and 1980 for thousands of unrepresented landowners unfairly biased the Commission against represented landowners.<sup>12</sup> Other such petitions are pending.

Other condemnation cases were significant in terms of the long-term impact of the holdings. In *United States v. 162.30 Acres in Clay County, Miss. (Uithoven)*, the court held that alleged noncompliance by federal officials with the National Historic Preservation Act is not a legally sufficient defense to condemnation under the Declaration of Taking Act, but the district court may withhold possession from the federal officials pending their compliance with the Act.<sup>13</sup> In other actions, the courts have held that in valuing lands having a mineral content, it is proper to use methods such as the capitalization of royalties in the absence of comparable

sales.<sup>14</sup> A substantial award to New Mexico, which claimed that a taking reduced the value of various rights reserved in its lease agreements, was reversed for lack of a showing that any of those rights could have been used in the reasonably near future.<sup>15</sup>

The Division began fiscal 1981 with 18,963 tracts of land pending in condemnation proceedings. During the year, new condemnation actions were filed to acquire 1,531 tracts of land. The appraised value of these tracts is \$61 million. During the year, the Division closed 4,797 tracts, thereby reducing the backlog by 3,266 tracts for a year-end total of 15,697 tracts pending. The aggregate total of claims for the tracts pending at the end of the year is in excess of \$1 billion. These figures do not include work on the Redwoods acquisition program which is still in the preliminary stages.

## Appraisal

In conjunction with this land acquisition responsibility, the Division maintains a land appraisal capability in its Appraisal Section. Appraisals are conducted on all properties subject to acquisition and condemnation and are also prepared when needed by other bureaus and divisions in the Department. During 1981, the appraisal team reviewed 3,276 tracts, analyzed 1,604 appraisals, prepared 946 memoranda, and participated in the settlement of 125 matters.

## Inverse Condemnation—Court of Claims

As a large landowner, the United States is often involved in "inverse condemnation" cases. These cases generally arise where an adjacent landowner alleges that some federal activity has effectively deprived him of the use of his property and seeks compensation for his loss. If his claim is for compensation over \$10,000, he must bring the action in the Court of Claims. Presently pending are approximately 150 such cases. They include claims of flooding of property by construction of dams; claims that the United States, particularly the military agencies, has taken an avigation easement over a person's property by overflight; claims that the United States has condemned a leasehold by remaining as a carryover tenant; claims that the United States has condemned property through such miscellaneous other actions as bombing practice, misuse of Indian funds, federal regulation of dune areas, or legislative action. Substantial sums of money are at stake in these cases.

"Taking" litigation in the past year has been most active in the area traditionally referred to as "overflight litigation." In the typical setting, plaintiffs contend that government aircraft are generating noise and other interference with the use or enjoyment of their property by low and frequent flights over plaintiffs' tracts. The seminal case was *United States v.*

*Causby*,<sup>16</sup> where the Supreme Court upheld a taking recovery.

This year's Court of Claims litigation has included both the traditional case and a new breed of case. On the traditional side, *Gilliland v. United States*<sup>17</sup> involved Plant 42, an Air Force facility in California. After hearing the evidence that base aircraft landings had effected a taking, the Trial Judge recommended to the contrary and was affirmed by the Court of Claims. On the novel side, *Branning v. United States*<sup>18</sup> involved F-4 aircraft operations at the Marine Corps Air Station at Beaufort. The aircraft were flying carrier landing practice patterns at altitudes of 600 feet. Despite the fact that numerous cases since *Causby* had found no taking for government operations above 500 feet, the *Branning* court found one—based on peculiarly burdensome interference caused by this pattern. An additional recommended finding in *Branning* would have treated the land use recommendations of the Department of Defense Air Installation Compatible Use Zone program as *per se* evidence of a taking. The court, fortunately, did not adopt the finding.

## Natural Resources

An integral part of the Division's public land work pertains to the development and conservation of natural resources. Litigation involves the balancing of national environmental priorities and programs designed to develop the energy, timber, and water resources of the United States. In addition, natural resources litigation often involves issues relating to the proper division in our federal system of authority between the states and the national government.

## Water

The most significant issue associated with the development of water resources is the extent of federal water rights. First Colorado and now, increasingly, other states have decided to quantify water rights in major water sources in the state. Because the United States owns substantial land in these water-short western states, it must quantify its rights and participate in these general water adjudications. Most of the adjudications are in state court pursuant to provisions of the McCarran Act.<sup>19</sup> This work is expected to increase. Most of the work is handled from the Denver office, which is staffed by two attorneys. The Division also handles other cases related to federal water interests, including cases challenging water projects and federal water allocations in California and Arizona.

Another important part of federal water litigation concerns federal water reclamation law that governs the development and operation of federal water projects. The Division was involved in several significant cases this year which clarified the role of the Department of the Interior in operating their

projects. In an important decision, the court ruled that the Department of the Interior would have to promulgate formal regulations in accordance with the Administrative Procedures Act before excess land sales could be approved.<sup>20</sup> Congressional enactments supported Interior's imposition on irrigation right-of-way applicants of reasonable terms and conditions deemed necessary to protect the public interest and environment.<sup>21</sup>

## Energy Development

Federal lands contain vast reserves of oil, gas, coal, uranium, geothermal, and other energy resources. The federal government thus plays an integral role in providing the energy supplies needed to preserve our nation's security and economic well-being. In developing these resources, competing public interests must be reconciled. In many instances, disputes can only be resolved in litigation.

Perhaps in no area are these competing interests stronger than in the federal offshore oil and gas leasing program. This year the Division represented the United States in several key cases which will have a significant impact on how these critical resources will be developed and managed. In *North Slope Borough v. Andrus*, the Court of Appeals for the District of Columbia overturned a district court decision and permitted leasing off the north coast of Alaska.<sup>22</sup> The court of appeals upheld the adequacy of the environmental impact statement and found that the United States had met all of its true responsibilities. A lease sale off the coast of North Carolina was successfully defended from a challenge by the state<sup>23</sup> and a similar action instituted by the State of California is currently pending in the Ninth Circuit Court of Appeals.<sup>24</sup>

In October, the Court of Appeals for the District of Columbia remanded to the Department of the Interior the five-year outercontinental shelf leasing program—finding that, with regard to certain aspects, there had been inadequate consideration of environmental factors in developing the program.<sup>25</sup> The court held that the Department of the Interior had not adequately considered the program's potential for environmental and coastal zone impacts. Accordingly, the court ruled that Interior had not complied with the mandate of Section 18 of the Outercontinental Shelf Land Act Amendments which requires the Department to “. . . select the timing and location of leasing activities so as to obtain a proper balance between the potential for environmental damage, the potential for the discovery of oil and gas, and the potential for adverse impact on the coastal zone.”

The Division is involved in several other outercontinental shelf cases where the central issue relates to the proper division of revenues between the United States and the adjacent coastal state. In both *Louisiana v. Watt*<sup>26</sup> and *Texas v.*

*Watt*,<sup>27</sup> the states sought to enjoin lease sales pending resolution of the division question. In both cases, the request for injunctive relief was denied and the revenues placed in an escrow account. The proper standard for division is the subject of ongoing litigation.

## Environment

Over the past two decades, Division responsibilities in the area of environmental protection have grown to the point that a large portion of the Division resources are committed to representing the United States in environmental matters. The Division is responsible for defending the United States, and its officers and agencies and for bringing civil and criminal enforcement actions against polluters under numerous environmental statutes. They include the Clean Air Act, Clean Water Act, National Environmental Policy Act, Safe Drinking Water Act, Toxic Substances Control Act, Federal Insecticide, Fungicide, and Rodenticide Act, Surface Mining Control and Reclamation Act, Rivers and Harbors Act, Resource Conservation and Recovery Act, and the Comprehensive Environmental Response Compensation and Liability Act of 1980 (Superfund).

## Environmental Enforcement

In the area of environmental enforcement, the Division's primary clients are the EPA and the Army Corps of Engineers. Enforcement actions are filed at the request of these agencies and generally after unsuccessful attempts to resolve the problem in the normal permit or regulatory process. An effective enforcement program requires close cooperation between the Division and the agencies. In the past year, the Division sought to improve coordination by regularly meeting with regulatory officials to review enforcement policy and strategy.

## Hazardous Waste

In environmental enforcement, the Division has assigned top priority to develop a complete enforcement program in the hazardous waste area. In addition to the ongoing effort under the Resource Conservation and Recovery Act, the Division is gearing up an enhanced enforcement program under Superfund.

There were several important decisions in hazardous waste cases rendered in the last year. In *United States v. Diamond Shamrock Corporation*, the district court held that Section 7003 of the Resource Conservation and Recovery Act, which establishes a claim for relief where disposal of wastes may present an endangerment to health or the environment, is substantive and that the provision may be applied where

dumping of waste occurred prior to enactment of the Resource Conservation and Recovery Act.<sup>28</sup> Other opinions recognized that a broad range of parties may be liable for their contribution to the disposal. In *United States v. Ottati & Goss, Inc.*, the district court recognized that a lessor is responsible for wastes stored and disposed of on his land by a lessee.<sup>29</sup> In *United States v. Northeastern Pharmaceutical Chemical Co.*, the district court held that corporate officers who participated in the disposal of wastes could be liable under the Resource Conservation and Recovery Act.<sup>30</sup> In *United States v. Duracell International, Inc.*,<sup>31</sup> the State of Tennessee was joined under Section 309(e) of the Clean Water Act, which makes states liable for judgments rendered against their municipalities to the extent that state laws prevent the municipalities from raising revenues needed to comply with the judgment. The district court held that Section 309(e) did not violate the Tenth Amendment as interpreted in *National League of Cities v. Usery*.<sup>32</sup>

In two other cases, the Division enforced EPA's new hazardous waste management program, which became effective on November 19, 1980. In *United States v. Monochem, Inc.*, the United States obtained an injunction on consent against two generators of hazardous wastes and the operator of an unpermitted facility where the wastes were stored. The injunction required removal of numerous barrels of waste from the facility to a permitted site.<sup>33</sup> A preliminary injunction in *United States v. Ronald West* largely required compliance with interim status standards published under the Resource Conservation and Recovery Act. The facility posed a substantial fire hazard.<sup>34</sup>

The Division has already moved to amend several of its ongoing hazardous waste actions to include claims under the Comprehensive Environmental Response Compensation and Liability Act, and is in the process of amending other actions where appropriate.

The success of an enforcement program is gauged by the positive results achieved in reducing the threat posed to the environment. In several significant cases, the Division obtained settlements which will reduce the environmental hazard posed by unstabilized hazardous waste sites. Perhaps most notable was *United States v. Hooker Chemical and Plastics Corporation*, which concerned the Hyde Park landfill near Niagara Falls, New York.<sup>35</sup> Hyde Park is one of four Hooker Chemical sites in the area. The others are Love Canal, 102nd Street, and "S area." From 1953 to 1975, Hooker Chemicals used the Hyde Park site for disposal of more than 80,000 tons of chemical waste, including dioxin, one of the most toxic man-made chemicals. Waste has moved from that site past the campus of Niagara University and nearby homes. The settlement agreement includes extensive requirements for containment, collection, and treatment of chemicals migrating from the landfill, a monitoring program, and a health and



safety plan. The Division received public comments and chaired a public hearing on the decree. In September and October, the district court held hearings to receive the views of various intervenors who oppose the settlement. A decision is pending.

In *United States v. Occidental Petroleum Corporation*, the company disposed of wastes which are migrating into groundwater.<sup>36</sup> The settlement agreement requires the company to undertake extensive remedial actions, including excavation of contaminated soil and long-term groundwater removal and treatment at its Lathrop, California, facility. In *United States v. Wade*, a landowner, disposer, and other persons who are now insolvent were sued as a result of the transportation and disposal of hazardous materials at a site at Chester, Pennsylvania.<sup>37</sup> Subsequent to the filing of the complaint, investigation led to the discovery of 38 additional generators of hazardous materials to the site. To date, 32 of the 38 generators have agreed to settlements requiring the payment of a total of approximately \$1.7 million for clean up of the site. The six generators who failed or refused to settle have been added as additional defendants in an amended complaint which also adds a claim under Superfund.

### **Clean Air Act and Clean Water Act**

The enforcement program also remained active in other areas. An issue always present in enforcement action relates to the authority of the United States to enforce the law. The right of the United States to compel a state to enforce its Clean Air Act Implementation Plan and EPA regulations banning state registration of motor vehicles failing an emission inspection was recognized in *United States v. Ohio Department of Highway Safety*.<sup>38</sup>

There were numerous significant civil settlements this year in cases under the Clean Air Act and the Clean Water Act. In *United States v. Ohio Edison Company*, the United States obtained a settlement under the Clean Air Act against Ohio Edison which requires it to control particulate emissions at its Sammis coal-fired power plant by installation of expensive control equipment and use of higher-quality coal. The company also agreed to pay \$1.5 million in civil penalties.<sup>39</sup> In *Northwest Ohio Lung Association v. George Denton*, a citizens' suit under the Clean Air Act against the State of Ohio in which the United States became a plaintiff, the district court entered an order based on stipulated facts that required compliance by the State of Ohio with the particulate standard at 23 prisons, mental hospitals, and youth development centers by the installation of controls and over-controls (in lieu of civil penalties).<sup>40</sup> The projected cost of these controls is \$20 million. In *Tennessee Thoracic Society v. Freeman and State of Alabama v. Freeman*, citizens' suits under the Clean Air Act against Tennessee Valley Authority, in which the EPA intervened, for violations of particulate and sulfur

dioxide standards at plants in Kentucky, Tennessee, and Alabama, were settled by a consent decree which requires the Tennessee Valley Authority to install over \$1.2 billion worth of air pollution control equipment.<sup>41</sup> In *United States v. Phelps Dodge Corporation, Inc.* and *United States v. ASARCO, Inc.*, two of the three largest producers of copper in the country entered into consent decrees under the Clean Air Act requiring them to install pollution equipment to control particulate and sulfur dioxide emissions.<sup>42</sup>

Consent decrees were also obtained against several steel companies this year. The United States reached a nationwide settlement with National Steel Corporation settling actions filed against its integrated steel plants in Michigan, Illinois, and West Virginia under the Clean Air Act and Clean Water Act.<sup>43</sup> National agreed to install millions of dollars of pollution control equipment at all of its plants to bring them into compliance with the requirements of the Act and to install enhanced controls in lieu of civil penalties. The United States also obtained a consent decree under the Clean Air Act with United States Steel for its Fairless works in Pennsylvania.<sup>44</sup> The settlement requires control of all sources of particulate emissions. The Division is now reviewing steel company applications for extensions of compliance dates under the Steel Industry Compliance Extension Act of 1981 and will begin to negotiate decrees to implement any extensions granted by EPA's Administrator under the Act.

Poorly designed and improperly operated public treatment works have been a persistent problem under the Clean Water Act. The Division obtained settlements in several key public works cases this year. In *United States v. Tulsa and City of Broken Arrow*, the United States obtained a \$140,000 civil penalty and a commitment to install equipment and initiate maintenance procedures costing approximately \$1.5 million to remedy violations under the Clean Water Act.<sup>45</sup> In *United States v. The City of Erie*, a long-standing enforcement case under the Clean Water Act against the city, its sewer authority and its principal source of industrial waste, Hammermill Paper Company, was settled by two consent decrees.<sup>46</sup> The consent decree with the municipal defendants requires them to install modern equipment and implement operating and maintenance measures necessary to bring them into compliance with their revised National Pollution Discharge Elimination System permit. The agreement with Hammermill Paper Company requires the installation of equipment at its plant to prevent discharge of excessive amounts of industrial sewage to the treatment plant and the payment of a \$25,000 civil penalty. In *United States v. City of Hopewell*, the United States entered into a consent decree with the city and the State of Virginia, which was joined under Section 309(e) of the Clean Water Act, requiring compliance with the terms of its National Pollution Discharge Elimination System permit and payment of a civil penalty of \$25,000.<sup>47</sup>

## Wetlands

An important part of the Division's overall enforcement program is the wetland enforcement cases under Section 404 of the Clean Water Act and Section 10 of the 1899 Rivers and Harbors Act. The Division's reorganization of wetlands case management during 1979-80 has resulted in a gradual reduction in the backlog of existing wetlands enforcement cases. This has been achieved, in part, by encouraging U.S. Attorneys' Offices to focus more attention on these cases, and by lending litigation support to those offices with particularly severe backlogs. Furthermore, the Division's effort to concentrate its attention on large wetlands enforcement cases in which restoration of disturbed areas is an appropriate remedy has yielded substantial dividends during the past year. In *United States v. Conrad*,<sup>48</sup> the district court found that the defendant had violated Section 10 of the Rivers and Harbors Act and Section 404 of the Clean Water Act by filling in wetland areas without appropriate permits from the Army Corps of Engineers. The court assessed a civil penalty of \$100,000 and ordered the defendant to restore approximately 22 acres of wetlands. In *United States v. Board of Trustees of Florida Keys Community College*,<sup>49</sup> the district court imposed liability on a college and the contractor it hired to perform the unlawful filling. The court gave the college the option of paying a penalty of \$15,000 and performing some environmentally beneficial work at another location on its campus, or restoring the area illegally filled and paying a \$3,000 penalty. The contractor who did the work was ordered to pay a penalty of \$3,000.

## Criminal Enforcement

While the Division's environmental enforcement effort is generally carried out in the context of civil litigation, statutory criminal provisions have been used in cases where there was a knowing and willful violation of the law.

In *United States v. Ward*, the defendant was charged with dumping of PCB's along county roads in North Carolina and was convicted by a jury of violations of the Toxic Substances Control Act and 18 U.S. Code 2(b) (aiding and abetting).<sup>50</sup> He was sentenced to two and a half years in jail and a fine of \$200,000. The appeal is pending. In *United States v. Wes-Con, Inc. and Eugene Rinebold, Sr.*, the company and its president were charged with illegal disposal of PCB's under the Toxic Substances Control Act and with concealing disposal under 18 U.S. Code 1001 by the filing of false reports.<sup>51</sup> The corporation was convicted of both the illegal disposal and false reporting charges. The president was acquitted. In *United States v. Corning Fibers, Inc. and William Bushey*, Corning Fibers and its president were charged with violations of the Clean Water Act, 18 U.S. Code 1001 and criminal contempt, based on the dumping of

untreated waste and sludge into a river in Vermont, concealment of the dumping, and misrepresentation to the district court of compliance with a previous consent judgment.<sup>52</sup> Both defendants pled guilty and sentencing is pending. In *United States v. Cunningham Enterprises*, the corporation and its president were charged with unauthorized discharges under the Clean Water Act and false reporting.<sup>53</sup> After guilty pleas, the president received one year's probation and a \$10,000 fine and the corporation paid a \$15,000 fine. In *United States v. Passarello*, the manager of the New Castle Sanitation Authority was charged with submitting false discharge monitoring reports under the Clean Water Act.<sup>54</sup> He was sentenced to two years' probation after a plea. In *United States v. Shape Components*, the company pled guilty to two counts of unpermitted discharges under the Clean Water Act and was fined \$10,000.<sup>55</sup> In *United States v. Distler*, the conviction of the defendant under the Clean Water Act for unlawful discharges into the Ohio River and interference with the operation of the Louisville sewage treatment system was affirmed by the Sixth Circuit.<sup>56</sup> The Supreme Court denied *certiorari*.<sup>57</sup>

## Environmental Defense

In addition to its enforcement role, the Division is responsible for defending the United States and its officers when challenged on the basis of federal environmental law. While the constitutionality of an act is often at issue, a bulk of the Division's defensive work rests in cases where the authority of an agency official to engage in a particular activity is questioned.

Because important federal policies and programs often hang in the balance, the Division has adopted an aggressive posture in its defensive work. Questions relating to justiciability are raised and, to discourage frivolous and unnecessary litigation, attorney fee awards are carefully scrutinized and litigated when necessary. During the year, several key decisions were rendered where justiciability was the central issue. In *Middlesex County Sewerage Authority v. National Sea Clammers Assn.*, the Supreme Court stated that the citizens' suit provisions of the Clean Water Act and the Marine Protection, Research, and Sanctuaries Act were precisely the private remedies which Congress considered appropriate and that consequently no private rights of action based upon either statute can be implied.<sup>58</sup> Similarly, the Division obtained a ruling that the Rivers and Harbors Act of 1899 prohibition, of obstructions to navigable waters absent Congressional authorization, did not create a private cause of action to enforce the requirement, so that a challenge to massive state and federal projects to divert water from northern to southern California was not justiciable.<sup>59</sup> Also, alleged violations of the provisions of an environmental impact statement (EIS) may not provide a basis for a suit for

damages.<sup>60</sup> The Supreme Court, in *Milwaukee v. Illinois*, concluded that the comprehensive Clean Water Act supplanted the federal common law of nuisance and negated it as a basis for suit by the state against the city's discharge of sewage into Lake Michigan, thereby limiting the state to relief permitted by the Act.<sup>61</sup>

## Clean Air Act

During the past year, the section successfully defended a series of challenges to important EPA regulatory actions under the Clean Air Act. In a decision whose broad significance transcended the facts in the case, the District of Columbia Circuit Court of Appeals in *Sierra Club v. Costle*,<sup>62</sup> upheld EPA's new source performance standards for coal-fired power plants. In rejecting several substantive and procedural challenges to the standards, the court held that the agency did not engage in impermissible *ex parte* contacts when EPA officials met at various times during the rule-making with President Carter, members of the White House staff, Congressional officials, heads of other Executive Branch agencies, and representatives from industry.

In *American Petroleum Institute v. Costle*,<sup>63</sup> the court upheld EPA's national ambient air quality standards for ozone, and reaffirmed the principle that EPA need not consider economic and technological feasibility in setting standards necessary to protect public health. In *Natural Resources Defense Council v. EPA*,<sup>64</sup> the District of Columbia Circuit Court of Appeals concluded that the "technology-forcing" features of Title II of the Clean Air Act (relating to motor vehicle emissions), authorized EPA to base future emission standards for diesel-powered passenger cars on technology which, while not fully developed at the time the standards were promulgated, would, in the agency's judgment, be perfected by the time the standards become effective.

Two cases regarding EPA's authority to use private contractors to conduct inspections of sources of pollution regulated under the Clean Air Act were decided by the court of appeals during the past year. In *Bunker Hill Company v. EPA*,<sup>65</sup> the Ninth Circuit ruled that it was permissible for EPA to use private contractors to conduct such inspections, since the contractors were "authorized representatives" of the agency within the meaning of the Clean Air Act. The Tenth Circuit reached a contrary conclusion in *Stauffer Chemical Company v. EPA*.<sup>66</sup>

## Clean Water Act

In the area of EPA's regulatory activities under the Clean Water Act, the Division also had success in defensive work. In *EPA v. National Crushed Stone Association*,<sup>67</sup> the Supreme Court held that the Clean Water Act did not require EPA to

include in regulations (which provide that effluent discharges receive best practicable treatment) a variance provision which allows consideration of the economic capability of an individual discharger to afford the costs of the requisite level of treatment. In a related matter, *Crown Simpson Pulp Company v. Costle*,<sup>68</sup> the Ninth Circuit concluded that EPA appropriately vetoed a permit granted by a state which purported to allow variances from otherwise applicable effluent limitations based on the quality of the receiving waters. Furthermore, in *Natural Resources Defense Council v. EPA*,<sup>69</sup> the District of Columbia Circuit Court of Appeals ruled that EPA could grant to all municipalities meeting certain threshold criteria, statutory variances from the secondary treatment requirement of the Clean Water Act. The court expressly rejected the argument that the variance provision was limited just to west coast and island jurisdictions such as Hawaii, Puerto Rico, and the Virgin Islands.

The Division has devoted a substantial amount of time to the successful defense of the Immigration and Naturalization Service's operation of the Krome North Service Processing Center in Miami. Krome North is used to detain undocumented aliens pending a final determination of their immigration status. Because of the large number of undocumented Haitian aliens arriving in south Florida—at one time often as many as 1,000 per month—the facilities at Krome were crowded. In July 1981, the Governor of Florida sued the Attorney General and the Immigration and Naturalization Service asking, *inter alia*, that Krome be closed or its population drastically reduced.<sup>70</sup> Among other things, Florida alleged that Immigration and Naturalization Service's operation of Krome was causing pollution of the Biscayne Aquifer, which serves as the sole source of drinking water for millions of people in south Florida. The district court has on two occasions denied Florida's motions for preliminary injunctions, ruling that Florida failed to meet its burden of proving pollution.

## National Environmental Policy Act

These suits, which number about 300, challenge federal agency action for failure to comply with provisions of the National Environmental Policy Act, which requires that an agency consider environmental factors in making decisions. Many controversial federal projects and programs have been challenged in these cases, e.g., military actions (decision on the MX missile system), projects (highways, dams), and programs (herbicide and pesticide spraying). These cases generally come to the Division on motions for preliminary injunction and require fast, effective action.

Agencies prepare environmental assessments for projects with possible significant environmental impacts and prepare EIS's for major federal actions having a significant impact on



the environment. Suits generally fall into three categories: 1) no EIS or assessment was done; 2) an assessment was prepared and a decision made not to prepare an EIS; and 3) an EIS was prepared but the plaintiff alleges that it was inadequate. Because agencies have become more aware of the need to prepare preliminary assessments, the level of cases falling into the first category has declined. However, the question of whether an EIS is needed or whether a particular EIS is adequate is still the subject of much litigation.

In several cases, the Division has successfully defended an agency's decision that an EIS was not needed. In a case involving the export of a nuclear reactor to the Philippines, the D. C. Circuit affirmed the NRC decision not to consider possible health, safety, and environmental effects within that country.<sup>71</sup> The providing of assistance to Mexico for the spraying of opium poppies with herbicides was sustained under the National Environmental Policy Act and other laws.<sup>72</sup> Although the Division was unsuccessful at the appellate level, *certiorari* was granted in *Weinberger v. Catholic Action of Hawaii*. In this case, the Ninth Circuit suggested that the Navy's alleged plan to store nuclear weapons in a storage facility must be the subject of a publicly disclosed "hypothetical" EIS under the National Environmental Policy Act, even though military secrets would be revealed.<sup>73</sup>

The Division has been successful in defending the adequacy of EIS's. Critical in these cases is the extent to which a court will question the judgment or estimates of the responsible agency official. In *South Louisiana Environmental Council v. Sand*, the scope of judicial review of the accuracy of the economic benefit recited in an EIS was severely restricted to "gross misstatements."<sup>74</sup>

## Surface Mining Control and Reclamation Act

The Division has successfully defended several lawsuits which challenged the constitutionality of the Surface Mining Control and Reclamation Act. In a pre-enforcement challenge brought by the Commonwealth of Virginia, an association of coal companies and others, the Supreme Court held: 1) The Act does not violate the Commerce Clause as regulating the use of private lands; 2) Sections 515(d) and (e) of the Act, which prescribe performance standards on "steep slopes," including a requirement that an operator return the site to its "approximate original contour," and which authorize variances from the contour requirement, do not violate any Tenth Amendment limitation on Congressional exercise of the commerce power as interfering with the states' "traditional governmental function" of regulating land use; 3) the "mere enactment" of the Act does not constitute a taking since it does not deny an owner economically viable use of his land; and 4) the provisions of Sections 521, 525, and

526 of the Act pertaining to the Secretary's issuance of orders for immediate cessation of a surface mining operation determined to be in violation of the Act do not violate the Fifth Amendment's Due Process Clause.<sup>75</sup>

As states have their own programs approved as complying with the federal program, further litigation is expected to develop. Under this statute, there is a large number of suits in which the Division defends decisions of the Department of the Interior's administrative process to enforce the Act, a number of enforcement actions initiated in court at the request of the agency, and a large number of cases to collect fines owed to the United States under the Act. During the year, approximately 48 suits for injunctive relief were filed seeking to require coal operators to comply with the requirements of the Act and regulations, or otherwise adequately reclaim strip mines. The Department authorized the filing of approximately 600 cases seeking civil penalties and obtained judgments totaling approximately \$513,000. Additionally, about 67 suits were authorized for the collection of reclamation fees, while judgments obtained in this type of case totaled \$403,000.

## "Taking" Cases

In challenging regulatory authority, plaintiffs often allege that the imposition of the regulation in question amounts to an unconstitutional taking of the property or interest in question, and thus, in many respects, is similar to inverse condemnation actions based on land use. The Division successfully defended this sort of claim challenging the Army Corps authority under Section 404 of the Clean Water Act. The Court of Claims held in *Deltona Corporation v. United States*<sup>76</sup> and *Jentgen v. United States*<sup>77</sup> that the Army Corps of Engineers' denial of permits to dredge and fill private property did not give rise to claims that the government had "taken" that property without paying just compensation.

The "taking" issue was also resolved in the government's favor in several cases decided under the Federal Insecticide, Fungicide, and Rodenticide Act. In *Chevron Chemical Co. v. Costle*,<sup>78</sup> *Pennwalt Corp. v. EPA*,<sup>79</sup> *Petrolite Corp. v. EPA*,<sup>80</sup> and *Mobay Chemical Corp. v. Costle*,<sup>81</sup> courts of appeals and district courts turned aside challenges to the constitutionality of Section 3(c)(1)(D) of the Federal Insecticide, Fungicide, and Rodenticide Act. It provides a mechanism by which EPA may use data produced by initial pesticide registrants to form the basis for registration decisions on similar chemicals produced or formulated by other registrants. Generally, the courts held that the agency's use of such data did not constitute an uncompensated taking of property in violation of the just compensation clause of the Fifth Amendment.

## Wildlife

The Land and Natural Resources Division has enforcement and defensive responsibilities under a wide range of wildlife and marine statutes and treaties. They include the Endangered Species Act, Marine Mammal Protection Act, Lacey Act, Fishery Conservation and Management Act, Fish and Wildlife Coordination Act, Migratory Bird Treaty Act, Whaling Convention Act and Animal Damage Control Act.

### Endangered Species

Domestically, the Division successfully defended a Sierra Club suit challenging Forest Service authorization of exploratory drilling in the Cabinet Mountains Wilderness under the Endangered Species and National Environmental Policy Acts.<sup>82</sup> The district court agreed with the Division's view that the additional environmental studies necessary before approval of actual mining would ensure adequate consideration of both environmental impacts and possible jeopardy to grizzly bears in the area. The court also agreed that the "arbitrary and capricious" standard of review should govern Endangered Species Act cases.

Equally important have been Division efforts to resolve troublesome challenges to possible delays to or limitations of local development and water use anticipated as a product of species protection under the Endangered Species Act.<sup>83</sup> Rather than litigate these cases to conclusion, the Division chose, with the support of the Department of the Interior, to attempt settlement of the cases by developing recovery plans for the species. This solution will meet both the needs of the species and the concerns of the plaintiffs. The Division reached agreement with plaintiffs in one case on the terms of a stay to allow development of a species recovery program, and expects agreement in a second case within the near future.

### Wildlife Enforcement

One of the principal reasons for aggressive wildlife law enforcement was concern over recurrence of Newcastle disease outbreaks that threaten domestic poultry and cost the federal government millions of dollars to eradicate. The successful prosecution in *United States v. Slocum*<sup>84</sup> provided an important deterrent to illegal dealings in diseased birds. Slocum was convicted on a series of counts involving his theft of a large number of exotic birds from his quarantine station after Department of Agriculture officials diagnosed the presence of Newcastle disease. Slocum transferred the birds, which he had imported, to a nearby holding facility which then experienced a Newcastle outbreak. After the Department of Agriculture eradicated all the birds at the facility to prevent spread of the disease, Slocum obtained a \$290,383 indemnity. Following his conviction, Slocum received a one-year sentence and \$18,000 fine.

Among the civil cases with international impacts is *Defenders of Wildlife v. Watt*<sup>85</sup> in which the district court approved a Fish and Wildlife Service (FWS) decision to lift a ban on commercial import of three species of kangaroos listed as "threatened" under the Endangered Species Act. The case establishes the important proposition that the FWS has great flexibility in determining what measures are necessary for conservation of foreign species listed under the Act's less restrictive "threatened" category.

Other significant prosecutions have arisen from undercover operations by the FWS and the National Marine Fisheries Service designed to crack down on illegal trade in reptiles and walrus ivory. The highly publicized "Snakescam" storefront operation set up by FWS agents has thus far resulted in nine prosecutions involving a total of 13 defendants. The walrus ivory investigation has already generated five convictions of 12 defendants. Most of the convictions from this initial wave of cases have been obtained through guilty pleas. Other significant wildlife trade prosecutions have involved illegal dealings in sea turtle meat and bald eagles.

The Division's wildlife law enforcement cases over the past two years have met with great success. A recent count showed courts had imposed 21 jail sentences ranging from five months to five years, and another 10 sentences of less than five months. These totals do not include suspended sentences or multiple sentences against the same defendant. In addition, the courts levied fines of over \$110,000, set over 120 years of probation (conditioned in some cases on up to 1,500 hours of public service), and prohibited or restricted wildlife trade by convicted defendants.

Much of the Wildlife and Marine Resources Section activities develop from interagency cooperative efforts among the section, the FWS, the National Marine Fisheries Service, the Customs Service, and the Animal and Plant Health Inspection Service of the Department of Agriculture. Recently this Division has taken the lead on an interagency Memorandum of Understanding governing seizure and disposition of illegally imported wildlife and expects to see that Memorandum signed soon.

### Fisheries

The Division fisheries responsibilities relate to both domestic and international fishery disputes. Domestically the Division has also committed substantial effort to resolution of a series of cases involving competing state and Indian claims to Pacific salmon.<sup>86</sup> The courts have thus far declined to interfere with Department of Commerce regulation of the salmon harvest, but have ordered continued federal review of proper allocation of salmon between Indians and the states. Other defensive fishery cases involve challenges to Department of Commerce management of Gulf shrimp and Atlantic groundfish.<sup>87</sup>

In the international area, enforcement responsibilities led to a major prosecution under the Fishery Conservation and Management Act. The government recently indicted two Taiwanese corporations and four Taiwanese individuals for illegally shrimping in U.S. waters.<sup>88</sup> This case is the first to involve the fraudulent registration of foreign fishing vessels as U.S. flag vessels to avoid foreign fishing vessel restrictions under the Act.

Additionally, with the U.S. Attorneys' Offices, the Division handles both forfeiture actions and other civil litigation arising out of foreign vessel violations of the Fishery Management and Conservation Act. This year the Division brought nine new foreign vessel cases and settled six at an average of \$250,000 per case. These actions also affect U.S. decisions on allocations of fishery quotas to foreign governments and permits to individual vessels.

### Marine Mammals

A civil case of importance to Marine Mammal Protection Act law enforcement efforts is *Balelo, et al., v. Baldrige, et al.*<sup>89</sup> Plaintiffs successfully challenged, on Fourth Amendment grounds, the Marine Mammal Protection Act program that places observers on board tuna vessels to monitor the presence and incidental take of porpoises. The Division hopes to pursue an appeal since it does not consider the observers' presence a "search" and considers their data-gathering role authorized by the statute.

## Indian Resources and Native Claims

### Indian Resources

The United States has assumed, by virtue of laws and treaties, certain responsibilities to protect the lands and natural resources of federally recognized Indian tribes and individual Indians for whom the United States holds lands in trust. In addition, the United States, because of its unique relationships with Indian tribes, is authorized to appear in court in cases relating to the right of Indians to govern themselves within the boundaries of a federally created Indian reservation. Litigation in these areas is conducted by the Division.

During the year, the Division concentrated much effort on litigation involving the quantification of Indian water rights. In *Colville Confederated Tribes v. Walton*,<sup>90</sup> the Ninth Circuit held that a non-Indian purchaser of an Indian allotment acquires a right, with a priority date of the date upon which the reservation was established, to use the amount of water that had been used by the Indian vendor at the time of sale plus any additional water appropriated by the non-Indian purchaser with reasonable diligence after the date of the transfer of title. The court also held that the state had no jurisdiction to regulate the non-Indian's use of such water.

Petitions for *certiorari* have been filed by the State of Washington and the Colville Tribes.

In the *United States v. TCID*,<sup>91</sup> the Ninth Circuit reversed a district court opinion which held that the United States, as trustee for the Pyramid Lake Indian Tribe, was barred as a result of its participation in the Orr Ditch Decree from asserting a claim to water to maintain the tribal fishery. The Ninth Circuit held that since the United States represented both TCID and the Tribe in Orr Ditch, there was no adversity between those two interests and therefore the additional claims could be asserted against the water rights available to TCID. In a related case, *United States v. Alpine Land & Reservoir Company*,<sup>92</sup> the district court in Nevada held that the Secretary of the Interior had no authority, other than that of a "lien-holder," to control or regulate the use and conservation of water delivered from the Newlands Reclamation Project in Nevada. The district court further held that the water duty was 3.5 acres-feet per acre for bottom land and 4.5 acres-feet per acre for bench land. The United States has taken an appeal in the case. In two other related cases, *Truckee-Carson Irrigation District v. Secretary of the Interior*<sup>93</sup> and *Carson-Truckee Conservancy District v. Watt*,<sup>94</sup> trial has been completed but no decision has yet been rendered.

In areas other than water law, there were significant developments in cases handled by the Division. In a case of major importance, the Supreme Court in *Montana v. United States*<sup>95</sup> held, contrary to the contentions of the United States, that the federal government had not reserved, for the benefit of the Crow Tribe, title to the portion of the bed of the Big Horn River lying within the exterior boundaries of the treaty-created reservation. The immediate effect of the decision is to allow non-Indians to fish on the Big Horn River without compliance with Crow Tribal regulations, and the decision undoubtedly will result in assertions by other states that they own mineral deposits lying beneath navigable waters on Indian reservations. In *United States v. Michigan*,<sup>96</sup> the Court of Appeals for the Sixth Circuit affirmed a favorable district court ruling<sup>97</sup> recognizing the federal treaty right of certain tribes in Michigan to fish the waters of Lakes Michigan, Superior, and Huron free from state regulation.

The Division was successful in settling a breach of lease case against Mohasco, Inc. for \$555,000. Under the terms of the settlement, \$90,000 was paid to the Crow Tribe, Mohasco's lessor, and \$465,000 was paid to the Economic Development Administration in settlement of a loan made by the Economic Development Administration to the Tribe.

### Indian Claims

The Division defends the United States against legal, equitable claims asserted by Indian tribes under the Indian Claims



Commission Act of 1946. Since the Indian Claims Commission was terminated on September 30, 1978, all claims are litigated in the Court of Claims.

During the year, two significant Indian claims decisions were rendered by the courts. In a case brought by the Oglala Sioux, the Eighth Circuit affirmed dismissal of the Tribe's suit which sought some \$11 billion and return of some 7.3 million acres removed by Congress in 1877 from their reservations in the Black Hills of South Dakota. The court concluded that the Indian Claims Commission Act provided "a one-time, exclusive forum for the resolution of Indian treaty claims" arising before 1946.<sup>98</sup> In a separate case, the Court of Claims has recently held that it has jurisdiction under 25 U.S. Code 1491 and 1505 to hear breach of trust claims for alleged mismanagement of Indian property held in trust by the United States.<sup>99</sup> This decision, if sustained, could trigger a significant increase in the number of claims filed under the Act.

During the year, final judgments awarded by the Court of Claims on Indian claims were \$135,657,267, approximately 45 percent of the amount requested. The total claimed in these cases was \$300,624,670. Seven cases were dismissed, four on their merit and three at the request of the plaintiff. Additionally, the Division was able to settle a number of pending cases. This year, 32 final judgments were entered as a result of compromise settlements. These judgments resulted in awards of \$67,151,325, on claims of \$231,760,535 or 26 percent of the claims. As a result of these settlements, 25 dockets were closed.

### **Alaska Native Claims**

The Division is similarly responsible for representing the United States in claims presented by Native Alaskans. Passed in 1971, the Alaska Native Claims Settlement Act established a fund of money and land which would be distributed to the Alaska Natives in exchange for extinguishing any aboriginal claims which they might have against the United States. Extensive litigation has arisen out of the complex statutory scheme for registration of natives, establishment of village and regional corporations, selection distribution of the land, and distribution of the money. Many of the cases have been resolved. A number of those still pending will be affected by the Alaska Lands Act. That Act, however, will clearly give rise to extensive new litigation as its terms are applied and implemented. To accommodate some of the workload in this area, the Division has an attorney permanently assigned to Alaska.

### **Guam Land Claims**

While no special trust relationship exists between the United States and Guam, Section 204 of the Omnibus Territories

Act of 1977 provides that Guamanians who believe the United States did not treat them fairly in condemning their land during and after World War II can bring suit to establish unfair treatment and claim adequate compensation. Over 500 of these cases have been filed which expose the United States to hundreds of millions of dollars of potential liability. The trial court has determined that plaintiffs are entitled to a jury trial on the issue of liability (a ruling upheld by the Ninth Circuit on interlocutory appeal) and that issues of damages will be tried before issues of liability are tried. Because of extensive pre-trial preparation and discovery by the government's attorneys, the Division succeeded in persuading the court to strike plaintiffs' evidence which the government believed to be excessively high and not reflective of fair market value. Recently, the district court judge assigned to these cases recused himself and this has delayed the start of the trials.

### **Analytical Support**

In addition to the primary litigation function, the Division provides analytical support to the Attorney General and other senior Department officials, conducts training programs for government attorneys and reviews and assists in the development of legislation.

During the year, the Division completed work on the Attorney General's Asbestos Liability Report. The report was mandated by Section 8(b) of the Asbestos School Hazard Detection and Control Act of 1980.<sup>100</sup> The Division likewise participated in the development of proposed rules for rewards under the Atomic Weapons Special Nuclear Material Act.<sup>101</sup> In addition, the Division provided staff support for the Superfund Study Group, an organization created by Section 301(e) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980.<sup>102</sup>

Analytical support was provided for the Attorney General in his work as a member of the Cabinet Council on Natural Resources and the Environment. The Division provides staff support for the Coal Interagency Working Group (CIWG). The CIWG was organized by the Department of Commerce to speed development of U.S. coal export capabilities. The Assistant Attorney General represents the Department in this effort.

The Division is also actively involved in reviewing and preparing legislative proposals. A draft has been completed and forwarded to Congress of the Seabed Boundary Act which would clearly delineate the boundary between offshore lands control by the states and by the federal government. The Division participated in the development of legislation designed to protect barrier islands. It drafted a proposed amendment to the general venue statute which places actions brought against the federal government in the federal judicial

district where the impact of the action would be most strongly felt. The Division has monitored several regulatory reform bills which will have a significant impact upon the Division's enforcement and defense efforts.

During the year, several training programs were organized and conducted under the auspices of the Division. A seminar was held in the fall for U.S. Attorneys and state enforcement personnel to improve the hazardous waste enforcement program. Emphasis was placed upon enforcement techniques used under Resource Conservation and Recovery Act, and the impact of Superfund was considered and discussed. In conjunction with the Department of Defense, a training seminar was conducted which focused on recent developments in overflight law. In March, the Division sponsored a wildlife law training program for government attorneys and investigating agents. The Equal Access to Justice Act was the central topic for discussion at a summer seminar on attorney fee awards.

## Administration

The primary administrative goal for the Division has been to improve professional financial management, systems, administration, and analytical support services in response to the rapid growth in workload experienced in this Division during the last several years.

Two of the responses to this growth have been the initiation and implementation of the Division's computerized docket tracking case management and attorney time systems. These systems have been implemented throughout the Division and provide statistical control information vital to the management of the Division—including attorney time by case, feedback to managers on the accuracy of case weights, and the handling of case prioritization. The data obtained through these systems will aid in developing models and schedules by case type and weight, developing performance measures for program evaluation, performing trend analysis of case costs to determine changing resource requirements, and developing an effective system for program planning and resource allocation.

Computerized litigation support systems have been implemented for capturing, indexing, and referencing large numbers of case-related documents as well as statistical and financial information to support legal actions. This capability is crucial to the successful litigation of major Division cases, particularly those cases involving toxic and hazardous waste, environmental enforcement, and land acquisition.

### Fiscal Year 1981 Workload Statistics

#### Land Acquisition:

Tracts Start .....	18,963
New Tracts Opened .....	1,531
Tracts Closed .....	4,797
Tracts End .....	15,697

Environmental Defense	
Matters Start .....	1,720
New Matters Opened .....	475
Matters Closed .....	758
Matters End .....	1,437
Environmental Enforcement	
Matters Start .....	784
New Matters Opened .....	312
Matters Closed .....	274
Matters End .....	822
Indian Resources	
Matters Start .....	602
New Matters Opened .....	52
Matters Closed .....	154
Matters End .....	500
Indian Claims	
Matters Start .....	118
New Matters Opened .....	7
Matters Closed .....	34
Matters End .....	91
General Litigation	
Matters Start .....	2,755
New Matters Opened .....	1,820
Matters Closed .....	954
Matters End .....	3,621
Appellate	
Matters Start .....	622
New Matters Opened .....	466
Matters Closed .....	357
Matters End .....	731
Policy Legislation & Special Litigation	
Matters Start .....	154
New Matters Opened .....	955
Matters Closed .....	906
Matters End .....	203
Wildlife and Marine Resources	
Matters Start .....	514
New Matters Opened .....	232
Matters Closed .....	268
Matters End .....	478
Division Totals	
Matters Start .....	26,232
New Matters Opened .....	5,850
Matters Closed .....	8,502
Matters End .....	23,580

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- (6) *United States v. Louisiana*, No. 9 Supreme Court Original.
- (7) *United States v. Alaska*, No. 84 Supreme Court Original.
- (8) *United States v. California*, No. 89 Supreme Court Original.
- (9) *United States v. Massachusetts*, No. 35 Supreme Court Original.
- (10) *United States v. Rhode Island*, No. 35 Supreme Court Original.
- (11) *Arcata Corp. v. United States*, Civil No. C-78-0879-TEH (N.D. Calif.); *Louisiana-Pacific Corp. v. United States*, Civil No. C-78-0874-TEH (N.D. Calif.); *Simpson Timber Co. v. United States*, Civil No. C-78-0868-TEH (N.D. Calif.).
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- (14) *United States v. 103.38 Acres in Morgan County, Ky. (Oldfield)*, \_\_\_\_\_ F.2d \_\_\_\_\_ (6th Cir. 1981).
- (15) *United States v. 77,819.10 Acres in Socorro and Catron Counties, N. Mex. (White Sands Missile Range)*, \_\_\_\_\_ F.2d \_\_\_\_\_ (10th Cir. 1981).
- (16) *United States v. Causby*, 328 U.S. 256 (1946).
- (17) No. 546-76 (Ct. Cl. decided June 12, 1981).
- (18) No. 400-76 (Ct. Cl. decided July 1, 1981).
- (19) 43 U.S.C. §666.
- (20) *National Land for People, Inc. v. Andrus*, \_\_\_\_\_ F.2d \_\_\_\_\_ (D.C. Cir. 1980).
- (21) *Grindstone Butte Project v. Kleppe*, \_\_\_\_\_ F.2d \_\_\_\_\_ (9th Cir. 1981), *cert. denied*, \_\_\_\_\_ U.S. \_\_\_\_\_ (1981).
- (22) *North Slope Borough v. Andrus*, 15 ERC 1633 (1980).
- (23) *State of North Carolina v. Watt*, No. 81-472-CV-51 (EDNC).
- (24) *State of California v. Watt*, No. 81-5699-5700, 5701, 5720, 5811, 5812, 5813, 5814, 5815, (9th Cir.).
- (25) *California v. Watt*, D.C. Cir. No. 80-1894, October 6, 1981.
- (26) *State of Louisiana v. Watt*, E.D. Louisiana No. 79-2965-I(2).
- (27) *State of Texas v. Watt*, E.D. Texas No. 79-476-CA.
- (28) *United States v. Diamond Shamrock Corporation*, No. C80-1857 (N.D. Ohio, May 29, 1981).
- (29) *United States v. Ottati and Goss, Inc.*, No. C80-225-L (D. N.H., Oct. 20, 1980) (order denying motion to dismiss); *United States v. Ottati and Goss, Inc.*, No. C80-225-L (D. N.H., Dec. 2, 1980) (order granting motion for preliminary injunction); *United States v. Ottati and Goss, Inc.*, No. C80-225-L (D. N.H., Jan. 20, 1981) (order on motion for summary judgment).
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- (31) *United States v. Duracell International, Inc.*, No. 80-1017 (M.D. Tenn., March 16, 1981) (order denying motion to dismiss).
- (32) *National League of Cities v. Usery*, 426 U.S. 833 (1976).
- (33) *United States v. Monochem, Inc.*, No. B-81-64 (S.D. Texas).
- (34) *United States v. Ronald West*, No. 80-1342 (W.D. Wash.).
- (35) *United States v. Hooker Chemicals and Plastics Corp. (Hyde Park Landfill)*, No. 79-989 (W.D. N.Y., filed Dec. 20, 1979).
- (36) *United States v. Occidental Petroleum Corporation*, No. CIV-S-79-989 (E.D. Cal.).
- (37) *United States v. Wade*, No. 79-1426 (E.D. Pa., filed April 25, 1979).
- (38) *United States v. Ohio Department of Highway Safety* \_\_\_\_\_ F.2d \_\_\_\_\_ (6th Cir. 1980), *cert. denied*, \_\_\_\_\_ U.S. \_\_\_\_\_.
- (39) *United States v. Ohio Edison Company*, No. 78-786-2 (S.D. Ohio, filed August 2, 1978).
- (40) *Northwest Ohio Lung Association v. George Denton*, No. 77-654 (N.D. Ohio, filed Dec. 12, 1977).
- (41) *Tennessee Thoracic Society v. Freeman*, No. 77-3286-NA-CV (M.D. Tenn.); *State of Alabama v. Freeman*, No. 77-P-0810-NE (N.D. Ala.).
- (42) *United States v. Phelps Dodge Corp.*, No. 81-088 (D. Ariz., filed April 6, 1981); *United States v. Asarco, Inc.*, No. 81-110 (D. Ariz.).
- (43) *United States v. National Steel Corp.*, No. 81-3009 (S.D. Ill.); No. 81-0005 (N.D. W.Va.); Nos. 79-73214 and 79-73215 (E.D. Mich.).
- (44) *United States v. United States Steel Corp.*, Nos. 79-3645 and 80-0743 (E.D. Pa., filed Oct. 9, 1979).
- (45) *United States v. Regional Metropolitan Utility Authority, the City of Tulsa, Oklahoma and the City of Broken Arrow, Oklahoma*, Civ. No. 79-C-672-C (D. Okl.).
- (46) *United States v. The City of Erie*, No. 76-136 (W.D. Pa.).
- (47) *United States v. City of Hopewell*, No. 80-0662-R (E.D. Va.).
- (48) *United States v. Conrad*, No. 80-877-Civ-T-GC (M.D. Fla., October 16, 1981).
- (49) \_\_\_\_\_ F.2d \_\_\_\_\_ (6th Cir. 1980), *cert. denied*, \_\_\_\_\_ U.S. \_\_\_\_\_.
- (50) *United States v. Ward*, No. 81-5162 (E.D. N.C.).
- (51) *United States v. Wes-Con, Inc. and Eugene Rinebold, Sr.*, Cr.No. 80-10040 (D. Idaho).
- (52) *United States v. Corning Fibers, Inc. and William Bushey*, Cr. No. 81-55-1 (D. Vermont).
- (53) *United States v. Cunningham Enterprises*, Cr.No. 80-20050-01 (S.D. W.Va.).
- (54) *United States v. Martin Passerello*, Cr.No. 81-40 (W.D. Pa.).
- (55) *United States v. Shape Components*, Cr.No. 80-134B-01 (D. N.J.).
- (56) *United States v. Distler*, \_\_\_\_\_ F.Supp. \_\_\_\_\_, Cr. No. 77-108L (W.D. Ky.), *aff'd*, \_\_\_\_\_ F.2d \_\_\_\_\_, No. 79-5339 (6th Cir. 1981).
- (57) *United States v. Distler*, \_\_\_\_\_ U.S. \_\_\_\_\_, No. 80-1986 (1981).
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- (59) *California, et al. v. Sierra Club*, \_\_\_\_\_ U.S. \_\_\_\_\_ (1981).
- (60) *Noe v. MARTA*, \_\_\_\_\_ F.2d \_\_\_\_\_ (5th Cir. 1981), *cert. denied*, \_\_\_\_\_ U.S. \_\_\_\_\_.
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- (62) *Sierra Club v. Costle*, \_\_\_\_\_ F.2d \_\_\_\_\_, 15 ERC 2137 (D.C. Cir. 1981).
- (63) *American Petroleum Institute v. Costle*, No. 79-1104 (D.C. Cir., September 3, 1981).
- (64) *Natural Resources Defense Council v. EPA*, \_\_\_\_\_ F.2d \_\_\_\_\_, 15 ERC 2057 (D.C. Cir. 1981), *cert. denied sub nom. General Motors Corporation v. Gorsuch*, No. 81-201 (Nov. 2, 1981).
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- (77) *Jentgen v. United States*, No. 415-77 (Ct. Cl., August 19, 1981).
- (78) *Chevron Chemical Co. v. Costle*, 641 F.2d 104 (3d Cir. 1981), *cert. denied* 49 U.S.L.W. 3954 (June 23, 1981).



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- (90) *Colville Confederated Tribes v. Walton*, 647 F. 2d 42 (C.A. 9, 1981).
- (91) *United States v. Truckee-Carson Conservancy District*, 649 F.2d 1286 (C.A. 9, 1981).
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- (95) *United States v. Montana*, 67 L.Ed. 2d, 493 (1981).
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- (99) *Helen Mitchell, et al. v. United States*, \_\_\_\_\_ Ct. Cl. \_\_\_\_\_ (October 21, 1981).
- (100) 20 U.S.C. 3601 et seq.
- (101) 50 U.S.C. 47 (Supp. 1980).
- (102) P.L. 96-510, 94 Stat. 2767.

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# Immigration and Naturalization Service

**Doris M. Meissner**  
**Acting Commissioner**

Throughout its history, the United States has been a land of opportunity for people around the world. Immigrants have come or sought admission to this country from literally every place on the face of the earth—seeking freedom, seeking jobs, seeking safety, seeking hope.

The immigration, naturalization, refugee and asylum laws of the United States, as passed by Congress, set forth the policy regarding who shall be admitted, for how long, and under what circumstances. The Immigration and Naturalization Service (INS) of the Department of Justice is the agency of the federal government principally responsible for the implementation of that policy and the enforcement of those laws. The Service administers these responsibilities through a broad network of regional and district offices located around the country (and in some foreign nations) which function in three primary areas.

- *Examinations*, which concerns activities related to the proper circumstances for admission of people into the United States;
- *Enforcement*, which involves activities designed to ensure that those who should not be admitted are not allowed to enter the country and that those who do enter illegally are apprehended and deported;
- *Operations and management support*, which provides the support services necessary to the conduct of the Service's basic missions.

The thrust of this report will be to describe the major activities of INS in these three areas in 1981. At the same time, a number of Headquarters offices provide advice and support to the Commissioner in his provision of overall policy guidance and direction to INS. These include: the General Counsel, the Comptroller, the Offices of Planning and Evaluation, and Field Inspections and Audit. The report will also review the contributions of those staff offices to the Service's overall activities in 1981.

In general, 1981 saw a continuation of increased emphasis on both the examination and the enforcement functions of the Service. It was the year of illegal Haitian arrivals, a year of further processing of Cubans from the Mariel Boatlift, a year in which refugees from Southeast Asia continued to make their way to U.S. shores, a year of dramatic increases in requests for political asylum, and, less dramatically, a year in

which the normal processes of the Service faced ever-increasing work-load demands. Some general statistical highlights are presented below:

- INS officers apprehended nearly one million deportable aliens in 1981.
- More than 12,000 smugglers of aliens were arrested; approximately one-half have been convicted, on smuggling and other charges.
- Using a recently enacted law, INS seized nearly 3,000 vehicles used by smugglers. The value of these conveyances was placed at \$6.7 million.
- Entry of 159,000 refugees was approved from Indochina, the Soviet Union, Eastern Europe, the Middle East, Latin America and Africa.
- Asylum requests increased dramatically, from less than 20,000 in 1980 to more than 63,000 in 1981.
- 175,000 persons became naturalized citizens.
- 320 million persons were inspected upon entering the United States.

## Overview of New Policies and Initiatives

In conjunction with the Administration's immigration policy decisions, as well as the overall effort to effect budgetary restraint, many initiatives and efficiencies were undertaken.

The Service participated in the Presidential Task Force on Immigration and Refugee Policy, which developed the policy options from which President Reagan made his decisions. Draft legislation has been prepared to implement these decisions as well as plans made to administer the proposed employer sanctions and legalization programs.

During 1981, the goals of the Service Mission Plan were translated into specific priorities for fiscal 1982. INS instituted a system to assure that personnel and financial resources were used in the most effective manner to support these priorities. Each priority had a specific timetable associated with achieving each goal, so that progress could be measured.

Even as the proposed legislation would address cumbersome procedural problems by expediting appeal, asylum and exclusion procedures, administrative actions were taken to improve efficiency wherever possible. Programs such as Up-

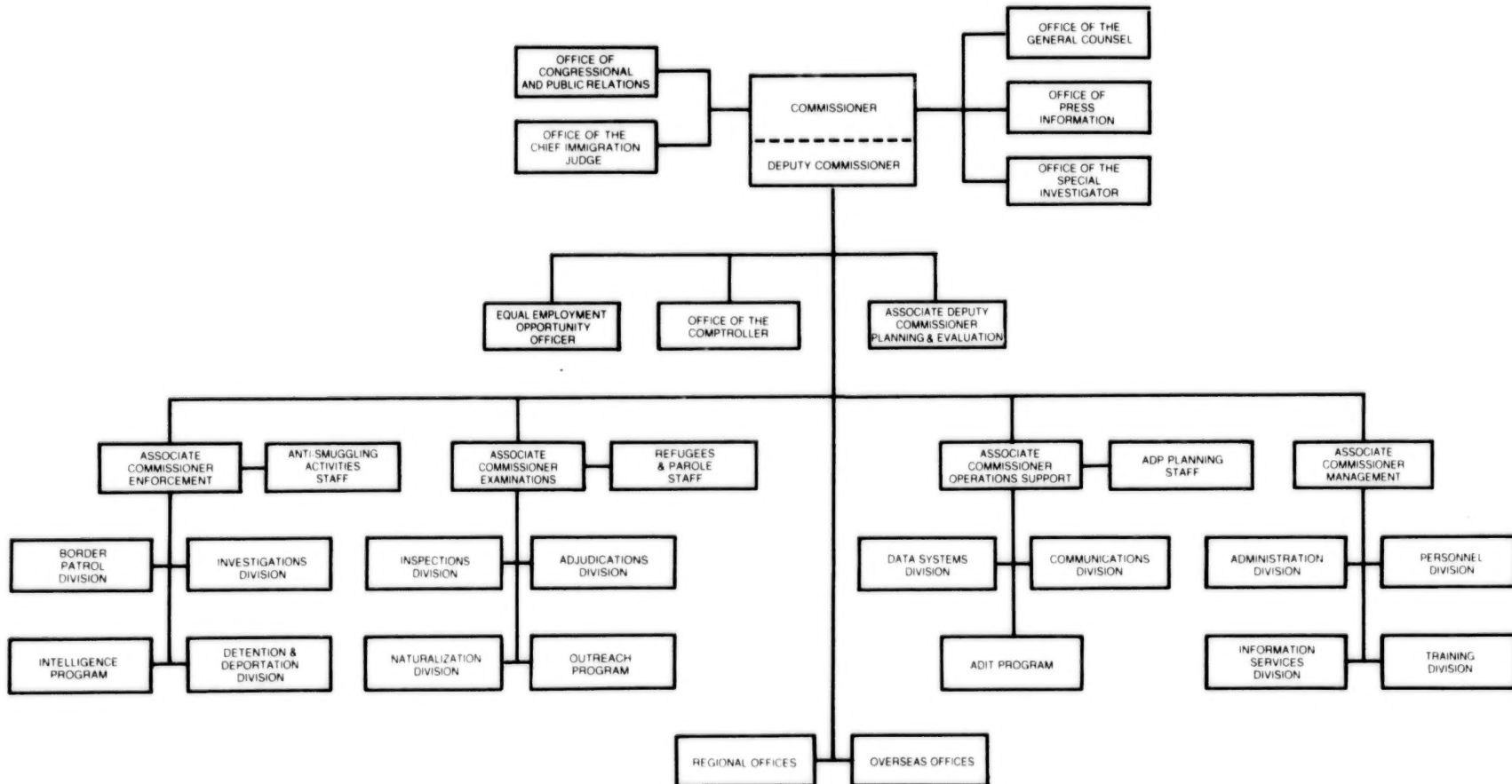
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## Immigration and Naturalization Service



Front Adjudication and the accelerated airport inspections, which are discussed below, were expanded. To best target resources, enforcement personnel were reassigned to locations and functions chosen to maximize their impact on deterring illegal entry and apprehending both illegal entrants and visa abusers. Automated support services improved the performance of Service officers in all areas.

Continuing a trend of recent years, mass arrivals of undocumented aliens by sea were a growing problem for the nation and a practical problem for the Service. In July 1981, INS began enforcing the legal requirement that all undocumented alien entries awaiting exclusion hearings must be detained. All such entrants were held pending final determination of their cases, except for certain humanitarian cases, e.g., minor children and persons with serious health problems. This policy, mandated by law, reflected return to standard practice prior to 1977. It was implemented uniformly, but Haitian illegal arrivals accounted for the largest number of aliens detained. The reversal of the previous policy of community release and work authorization was followed by a decrease in undocumented Haitian arrivals. Further, the Service developed contingency plans to deal effectively with a future emergency such as the Mariel Boatlift, which brought 125,000 undocumented aliens to the nation's shores.

## Examinations

The examinations program is composed of the following elements:

- the inspection of persons arriving at American sea, land, and air ports of entry to determine their admissibility to the United States;
- the review of requests for admission to appropriate immigration status under law;
- the supervision of refugee and parole programs;
- the examination of applicants for naturalization; and
- the conduct of outreach to the community.

Each of these primary activities is conducted—with substantial coordination—by a discrete organizational element of INS. Each will be discussed below.

## Inspections

This basic activity involves the review, at ports of entry, of documents held by individuals, and the individuals themselves, to determine their admissibility.

Over the last several years, the number of persons inspected at U.S. ports of entry had been increasing at an annual rate of four percent. During fiscal 1981, the total reached 320 million. Despite these increases, and a cut of 6.4 percent in the authorized inspections force, INS handled the workload and implemented a Congressional mandate to reduce overtime expenditures.

To achieve these results, INS implemented computerized financial controls and designed new operational procedures. To facilitate the entry of arriving passengers at airports, an innovative inspection procedure, ASIST, Accelerated Specialized Inspectional System Test, was begun at Los Angeles and Miami. This system provided for the combined staffing of primary inspection by cross-designated INS and U.S. Customs Service inspectors. Approximately 80 percent of the persons applying for admission were questioned only once—instead of twice—and permitted to exit the inspection facility immediately after having retrieved their baggage, without undergoing full baggage inspection.

INS also initiated plans to integrate the latest computer and communication technology into the inspection process. Alien profiles were being developed in order to identify unlawful entrants and to process arrivals more rapidly. Also in preparation was a system to provide inspectors with access to computerized data on arriving and departing nonimmigrants.

## Adjudications

The mission of the Adjudications Division is to render decisions on applications and petitions filed by aliens and citizens for benefits under the Immigration and Nationality Act. During fiscal 1981, 1,880,000 applications and petitions were received. This was an increase of three percent over 1980 receipts. Applications processed in fiscal 1981 were 1,770,000, an increase of two percent over fiscal 1980.

Adjudications management initiatives in fiscal 1981 included a field test of a streamlined procedure called Up-Front Adjudication (UFA). Under UFA, certain categories of routine, approvable cases were adjudicated immediately upon receipt. The philosophy behind the procedure was that by disposing of simple cases before they become part of the pending workload, INS would not only reduce the costs of such adjudications and improve service to the public, but also be able to shift resources to cases which better justified resource expenditures.

UFA underwent a four-month operational test at the Boston and Houston District Offices. Based on one analysis of over 6,400 cases, it was found that adjudicating cases under UFA procedures was substantially more efficient than traditional INS case-handling methods. The significance of these efficiencies is underscored by the fact that they were achieved without compromise to quality. Public response to UFA was extremely supportive, with favorable comments received from academia, business, voluntary agencies, and the private immigration bar.

By the end of fiscal 1982, INS intended to be adjudicating at least 25 percent of its nationwide adjudications workload under UFA procedures.

## Refugee and Parole

The Office of Refugee and Parole has responsibility for implementation of Service refugee and asylum programs, oversight of INS overseas office activity, and review of requests to exercise the Attorney General's parole authority.

During fiscal 1981, 158,531 refugees were approved for entry into the United States from Indochina, the Soviet Union, Eastern Europe, the Middle East, Latin America, and Africa.

In addition to the processing of refugees, the overseas offices adjudicate applications and petitions, conduct investigations dealing with suspected fraud in immigration matters, and provide liaison with other agencies, foreign and American, public and private. Assistance is provided to U.S. citizens and permanent residents in the area of immigration.

The Attorney General has broad authority to grant parole in cases determined to involve humanitarian factors or for emergent reasons in the public interest but this authority is to be used in a fairly restrictive fashion. Since all situations involving the abandonment of lifelong homes to take up residence in new and unfamiliar surroundings encompass humanitarian considerations in varying degrees, it is incumbent upon the Service to ensure that the Attorney General receives proper support in the exercise of his parole authority. During fiscal 1981, 1,887 such requests were approved while 1,347 were denied. Of those, 1,364 approvals were for citizens of Iran, while 544 citizens of Iran were denied parole. At the same time, requests for asylum in the United States grew from 19,845 in fiscal 1980, to over 63,000 in fiscal 1981.

A new INS office was opened in Singapore in April 1981. This office now has jurisdiction over Malaysia, Indonesia, and Singapore and has approved 15,650 Indochinese refugees for admission to the United States since May of 1981.

## Naturalization

The Naturalization Division processes applications to file petitions for naturalization, interviews applicants to determine their eligibility under the law, assists them in filing petitions before the naturalization courts, and makes appropriate recommendations to those courts.

Additionally, this division renders decisions in cases where applicants claim to have become U.S. citizens by birth abroad to citizen parents or have derived citizenship during minority through their parents' naturalization.

United States citizenship through naturalization was granted to approximately 175,000 persons during fiscal 1981. Approximately 27,000 certificates of citizenship were issued to persons who derived citizenship through the naturalization of their parents and to persons who acquired citizenship at birth through citizen parents.

## Outreach

The Outreach Program became fully functional in October 1978. It provides training and guidance to voluntary community groups and agencies to assist aliens in applying for benefits under the immigration and nationality laws. During fiscal 1981, 29 training sessions were held, attended by 1,301 participants. The workshops concentrate on three phases: Phase I—Family Reunification/ Adjustment of Status, Phase II—Visa Processing Abroad, and Phase III—Naturalization and Citizenship.

We now move from a review of those activities devoted to the admission of people to the United States, to those whose primary purpose is the effective enforcement of limitations upon entry into this country.

## Enforcement

The Enforcement Branch of the INS consists of the following major divisions:

- The Border Patrol Division, which seeks to block admission of illegal aliens into the country at U.S. borders.
- The Investigations Division, which seeks to apprehend and remove illegal aliens already in the country.
- Anti-Smuggling Activity whose investigative efforts are directed toward apprehension of smugglers of illegal aliens in order to deter illegal entries.
- Detention and Deportation Division, which effects the removal of illegal aliens apprehended by the enforcement branch, and manages detention of excludable and deportable aliens.
- Intelligence Activity, which develops strategic and tactical information related to enforcement issues, policy and projects.

Each of these functional activities will be discussed below.

## Detention and Deportation

As the need for detention space has grown with each successive wave of undocumented aliens, detention has become a major problem.

In 1981, undocumented Haitian aliens continued to arrive in the Miami area at the rate of approximately 1,000 monthly. In April 1981, the Service assumed responsibility for operating a new permanent detention facility in Miami. In August 1981, as a result of 1) the continuing influx of illegal Haitian arrivals, 2) the injunction against holding exclusion hearings and other legal constraints imposed upon the Service, and 3) the inability to locate suitable detention space, the Service assumed operating responsibility for a new temporary detention facility at Fort Allen, Puerto Rico.



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At the close of the fiscal year, more than 1,600 inadmissible Cubans continued to be detained at the Atlanta Federal Correctional Institution (FCI), as well as other FCIs. At the FCI in Atlanta, all of the detained Cuban criminals had been reviewed by Status Review Panels, composed of Department of Justice personnel.

There were improvements in the program in 1981. Progress was made in the Service's attempt to automate many of its detention and deportation functions. A users advisory committee was established and a systems development methodology (SDM) was developed. The users advisory committee established a set of objectives and an information requirements study was also completed.

## **Intelligence**

The INS intelligence program formulates policies and procedures for the collection, production and utilization of tactical and strategic intelligence to support the various operation and management functions of the Service. Intelligence liaison with the Federal Bureau of Investigation, Secret Service, U.S. Customs Service, U.S. Coast Guard and other agencies was strengthened during the fiscal 1981. INS instituted a joint effort with the Department of State to intercept and prevent the entry of international criminals and terrorists. The intelligence program also provided support to INS representatives assigned to 11 Organized Crime Strike Forces throughout the country. Strategic intelligence assessments on critical areas affecting INS operations, policy, and enforcement were prepared, particularly regarding the Cuban and Haitian situations.

INS continued to participate with the Drug Enforcement Administration and other agencies in the 24-hour-a-day operation of the El Paso Intelligence Center (EPIC) which maintains INS data bases on alien smuggling, false claims to U.S. citizenship, and arrival reports of private aircraft. During fiscal 1981, new inputs to the data bases totaled 199,864. INS personnel at EPIC responded to 41,499 inquiries during the year, and more than 26 percent of these resulted in positive identifications.

The INS Forensic Document Laboratory received increasing visibility in the national law enforcement community. In addition to the support provided to INS operating units, the laboratory assisted the Federal Bureau of Investigation, the Department of State, and other agencies. Document analysts provided testimony as expert witnesses in cases involving ex-Nazi denaturalizations, visa and passport fraud, counterfeit Social Security cards and Forms I-151. During the year, the laboratory tripled the data base for the known and questioned travel documents being catalogued in the technical reference file.

## **Border Patrol**

The Border Patrol, as the mobile, uniformed, enforcement arm of the INS, is charged with the responsibility for detecting and preventing the illegal entry and smuggling of aliens into the United States. Patrol agents perform their duties along, and in the vicinity of, 6,000 miles of international boundary and the gulf coast, utilizing motor vehicles, boats, aircraft, horses, and foot patrols.

In addition, the Border Patrol conducts farm and ranch checks in several interior locations, as well as highway traffic inspection on roads leading from the border. In fiscal 1981, the Border Patrol apprehended a total of 825,290 deportable aliens.

The majority of these apprehensions (460,626) were made by the Patrol's linewatch operations. Linewatch operations involve patrols along the designated U.S. border, and constitute the first line of defense against aliens attempting to enter the United States in the immediate vicinity of the international borders and coastlines of the United States. Its objectives are to:

- Cause persons seeking admission to the United States to present themselves to designated ports for inspection;
- Discourage illegal entries by locating illegal aliens in the border area before they can secure employment or realize profit or advantage from their illegal action;
- Prevent the penetration of illegal aliens into the interior of the United States where their removal would be expensive and time-consuming.

Numerous potential illegal entrants were deterred from attempting entry by the visible presence of Border Patrol agents assisted by fixed wing aircraft and helicopters.

## **Investigations**

The Investigations Division locates and apprehends aliens residing inside the United States in violation of immigration laws. It also gathers information to determine whether proceedings can be instituted under the Immigration and Nationality Act.

The division's activities cover a broad range of investigative techniques and a wide variety of situations. One of the division's major activities is the conduct of area control operations, which are designed to locate and apprehend aliens residing in the United States in violation of immigration laws. Area control operations are focused primarily on employed, illegal aliens at their places of employment. To maximize the impact of the operations, task force techniques are utilized in coordination with other agencies such as Department of Labor and State Employment Services. These efforts are targeted at employers who habitually employ illegal aliens and who violate other state and federal laws. Liaison with the

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Department of Labor and State Employment Services resulted in fiscal 1981 in many jobs which were held previously by illegal aliens being made available to citizens and legal residents.

Another area of fruitful activity during the year was the conduct of fraud investigations. These reflected a continuing increase in the number and type of sophisticated schemes designed to circumvent the immigration laws and other federal regulations. Schemes involved such aspects as non-immigrants who used illegally obtained Social Security cards to gain employment and ineligible foreign students applying for or obtaining guaranteed student loans and Basic Educational Opportunity Grants.

Prosecutions involving travel agencies and similar operations were pursued at new locations throughout the United States. Some such agencies supplied fraudulent letters of invitation and affidavits of support used by aliens to obtain nonimmigrant visas. After entry into the United States, the aliens were supplied with Social Security cards to which they were not legally entitled.

### **Anti-Smuggling**

In this specialized activity under the enforcement program, INS played a significant role in the arrest, indictment, and prosecution of smugglers of aliens. In 1981, over 12,000 smugglers were apprehended. While many of these smugglers were aliens, some were legal permanent residents and U.S. citizens.

In addition, apprehensions of aliens who had been transported unlawfully after entry numbered approximately 90,000 during the year.

Anti-smuggling investigators presented 9,343 cases to U.S. Attorneys for prosecution; 5,907 smugglers were convicted on smuggling or related charges. INS devised a classification system to categorize smugglers as major violators, low-level violators, or nonprofessional smugglers of household employees and relatives. Nearly 400 of the smugglers convicted were major violators, involved in operations/conspiracies which smuggled over 100 aliens and earned in excess of \$25,000 per month.

The seizure of vehicles used in smuggling was successfully employed as a deterrent. During fiscal 1981, 2,381 vehicles valued at over \$6.7 million were seized. Many of these vehicles were sold by the General Services Administration and the proceeds were returned to the U.S. Treasury. Others were put into use as replacement vehicles in the Service fleet or transferred to other federal agencies. This program has proven to be a deterrent to smuggling.

Cooperation with Mexico and Canada has assisted as a deterrent to smuggling and in the conviction of smugglers outside the United States. The Mexican government instituted assignment of special units at interior road checks in Mexico—

resulting in the apprehension of a number of Central American aliens before they reached the U.S. borders.

### **Operations and Management Support**

Examinations and Enforcement are the major programs of INS. However, no mission operation can function well without proper support in a host of technical and administrative areas. These include the following functions.

#### **Systems and Technology Planning**

The most important development in this area in fiscal 1981 was completion of the INS long-range Automatic Data Processing (ADP) plan. This comprehensive plan represented the culmination of an 18-month planning process that involved representatives of every major component of the Service, in both the central office and in the field.

The plan consists of a description of ADP support system/data base targets for implementation over the next decade; documentation of ADP systems which are currently operational; a transition plan; and a definition of the ADP planning process which INS intends to follow in the coming years.

The support systems are characterized as administrative systems, operations or mission support systems, and management systems. These systems are documented in terms of data bases or logical data groups in which information necessary for INS decisionmaking will be stored.

#### **Alien Documentation, Identification, and Telecommunications (ADIT)**

The ADIT branch prepares identification cards for immigrant aliens and nonresident border crossers. During fiscal 1981, the automated support segment of ADIT was being integrated with the Service's Master Index System, which contains information on permanent resident aliens in the United States, and remote terminals were being installed at seven major ports. Field office terminals were able to access Master Index and ADIT data, for support of both enforcement and service functions.

During fiscal 1981, the Immigration Card Facility operating under the ADIT program produced and issued secure Forms I-551, Alien Registration Receipt Cards, and Forms I-586, Nonresident Alien Border Crossing Cards. Cards issued to date totaled more than two million Forms I-551 and 233,000 Forms I-586.

#### **Automated Data Processing System**

On-line terminal access to the Master Index was provided to a total of 68 field offices during fiscal 1981. These terminals were used to enter over six million transactions and searches without mailing paper forms to the central office records for processing, providing increased efficiency throughout the

system. A new Master Index Security System was developed and implemented. Development was initiated on automated file transfer system, remote batch data entry for the Master Index, and entering the ADIT trailer records into the Master Index data base.

A major new project for field office automation was initiated in the form of the Naturalization and Citizenship Casework Support System (NCCSS). This system would provide case tracking, management information and clerical processing for the Naturalization and Citizenship function. The prototype system was to be installed in Los Angeles first, then duplicated in other field offices after suitable testing and evaluation.

### Research and Development

The Research and Development Program develops and applies technology to major INS problems. With the current emphasis on enforcement problems, particularly the problem of illegal entries between ports of entry, the program concentrated its efforts on the use of new technologies in wide-area surveillance. In this vein, the joint Department of State (Sinai Support Mission) and INS Border Control Study was completed. Applying the INS linewatch simulator, the agencies evaluated the performance costs of alternative systems of border surveillance for selected border areas (El Paso Sector and a Middle East region). As a result of this study, in which a low light level television (LLTV) camera system was rated highly in wide-area surveillance from a cost-effectiveness standpoint, a project was planned and initiated for verifying those results under operational conditions.

### Communications and Electronics

This division covers five program areas: radio communications, intrusion detection and security systems, telephone information processing systems, telecommunications and word processing. In 1981, the intrusion detection program completed design work and initiated procurement action for the replacement of two sensor systems along the southwest border. The new systems feature minicomputer controls for semi-automated monitoring of sensor alarms, radio dispatch functions and statistical reporting. The telecommunications program initiated a major project on the development of Immigration and Naturalization Service Interim Network Communications (INSINC) to establish a data communications capability for providing field office access to centralized data bases.

### Facilities and Engineering

During fiscal 1981, the Facilities and Engineering staff, the Bureau of Prisons, and the Corps of Engineers constructed a Service Processing Center in approximately 2½ months in Miami for the processing of Haitians, Cubans and others.

INS also solicited and negotiated a construction/lease agreement for an air operation facility in El Paso and a border patrol station in Uvalde, Texas.

The Facilities and Engineering Branch also renovated a facility in Fort Allen, Puerto Rico for Haitian detainees, began upgrading the Service Processing Center in Brooklyn, New York, and established a substation in Riverside, California.

**Contracting and Procurement.** The following acquisitions, totaling in excess of \$4.5 million, were made in 1981 in support of major INS program efforts:

- Services to design improvements for the Krome North Processing Center Sewage Treatment Plan;
- Solar energy architectural/engineering contracts in support of solar projects in El Centro and San Pedro, California; El Paso; Pittsburg, New Hampshire; Frontier, Washington; and Scobey, Montana;
- Construction contracts for renovations at Service Processing Centers in El Centro, California, and Port Isabel, Texas;
- Radio Frequency subsystems for Intrusion Detection Systems at the Marfa and McAllen, Texas, border sectors;
- Three Piper Super Cub aircraft for support of Border Patrol operations.

### Support of the Commissioner

The provision of policy oversight, direction and control to an organization as large, complex and diverse as INS is no easy task. There are several offices vested with the responsibility for providing support to the Commissioner and his deputy in the conduct of this responsibility. These include the General Counsel's Office, the Office of the Comptroller, the Office of Field Inspections and Audit, and the Office of Planning and Evaluation.

### General Counsel's Office

The General Counsel's Office advised the Commissioner regarding several important decisions rendered by the Supreme Court in 1981.

In one case, *United States v. Cortez*, No. 79-404, the Court reversed the Ninth Circuit and upheld the investigative "stop" of a vehicle by Border Patrol agents. The "stop" occurred in an area used frequently as a crossing point by illegal aliens entering the United States from Mexico. The Border Patrol had observed the area over a period of time and had deduced where and when illegal crossings were likely to occur, what type of vehicle would be used, and other details of the illegal activity. The "stop" was made based on these deductions. The Supreme Court in upholding the constitutionality of this "stop" said, "We see here the kind of police work often suggested by judges and scholars as examples of appropriate and reasonable means of law enforcement."



In *INS V. Wang*, No. 80-485, the Court again reversed the Ninth Circuit. This time the case involved an alien's motion to reopen application for suspension of deportation, a form of discretionary relief under the immigration laws. The Board of Immigration Appeals had denied reopening, finding that the alien had failed to make a *prima facie* case of extreme hardship, a requirement for such relief. The Ninth Circuit reversed. The Supreme Court found that the Ninth Circuit had ignored the regulation which requires an applicant for this relief to support his application with affidavit or other evidentiary material. It further found that the Ninth Circuit had "... improvidently encroached on the authority which the Act confers on the Attorney General and his delegates." This decision should discourage the courts from substituting their opinions for those of the Board or the INS.

The most significant recent piece of legislation affecting immigration is the Refugee Act of 1980. It was hoped that this Act would provide a systematic and permanent program of selecting refugees and those seeking asylum. Unfortunately, the Act has not solved all the problems relating to refugees and those seeking asylum, in part because it did not anticipate the very large numbers of aliens who would be seeking refugee status or asylum.

During fiscal 1981, INS implemented an attorney consolidation plan. INS attorneys previously were divided into two categories: trial and naturalization. All attorneys were reclassified as general attorneys and will be under the direction of the General Counsel. Chief legal officers were appointed for INS district offices. The plan called for attorney time spent on naturalization activity to decrease and all attorneys to have broader responsibilities, resulting in more efficient personnel use.

In September 1981, a Haitian litigation task force was established to coordinate the response of the Executive Branch to court challenges concerning the processing of illegal Haitian arrivals. This task force approach was successful in obtaining a favorable ruling from the U.S. District Court in Southern Florida on a number of issues, in continuing preparation for a district court hearing on the remaining issues relating to alien detention and access to counsel, and in obtaining dismissal of an interdiction suit in Miami.

### **Office of the Comptroller**

The Office of the Comptroller, established early in fiscal 1981, was designed to overcome financial and position

control problems of accountability, timeliness, consistency of process, and integrity of data and procedures. The new structure put control of the financial function in one organization with sufficient stature and visibility to enhance and ensure the integrity of both the data in the budget and the financial and position control process within INS.

The office developed a comprehensive quarterly report on the status of resources which includes analysis of funds and work force programs and status of resource conferences with top regional officials.

### **Field Inspections and Audit**

This office furnishes the Commissioner with independent, objective, and constructive appraisals of the effectiveness, efficiency, and economy of INS programs and operations.

In 1981, recommendations by this office led to improvement in management's ability to plan, monitor, control, and account for 1931 Act overtime expenditures. Field Inspections and Audit reported that Service regulations exempting airlines from liability for overtime payments were not supported by the 1931 Act overtime statute. The Service's General Counsel agreed with this finding. The matter was awaiting a decision by the Office of Legal Counsel of the Department of Justice. If INS regulations were revised as a result of this finding, INS would save several million dollars in overtime costs.

Inspections of central, regional and district office operations also led to improvements in delivery of service to the public through more effective and efficient use of personnel, equipment, and space in public information areas; security and control of fees collected by the Service; supervision of personnel dealing with the public; security and control of data entered in the Service's automated systems; and collection and reporting of statistical information.

### **Office of Planning and Evaluation**

The Office of Planning and Evaluation develops and monitors initiatives to enhance INS performance. Its work includes creation of operational priorities at the beginning of each fiscal year, and a role in allocating resources. The office, during the past year, concluded an examination of documentation problems of nonimmigrants visiting the United States as tourists or students.

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## Community Relations Service

**Gilbert G. Pompa**  
**Director**

Created by Title X of the Civil Rights Act of 1964, the Community Relations Service (CRS) provides a cost-effective alternative to the Department's litigation activities by working to resolve problems that lead to racial and ethnic tensions and conflict. It is the only agency in the federal government to which Congress has assigned the task of providing direct help to communities in the resolution of "...disputes, disagreements or difficulties relating to discriminatory practices based on race, color, or national origin...."

Most of the problems that CRS deals with bear a direct relationship to the Department's law enforcement responsibilities: for example, immigration issues tied to refugees and undocumented aliens, racial and ethnic confrontations over alleged civil rights violations, and disputes over school desegregation.

The relationship is less direct in instances where minorities accuse law enforcement of using excessive force against them or of disparities in police protection, where school administrators are alleged to use a disciplinary double standard, or where white fishermen accuse Indo-Chinese fishermen of violating local laws and customs.

### Assistance Stresses Voluntary Action

CRS' greatest asset lies in its third-party neutrality role. Agency professionals enter troubled communities with no investigative powers or authority to dispense funds. A voluntary settlement of the problem is the goal. Depending on the circumstances, help takes one of two forms.

If a dispute is flaring or has developed, help comes in the form of conciliation. In operational terms, this is an informal agency process of easing community tensions and of starting the disputants to talking to each other. Techniques applied are influenced by the problem. But usually they include: 1) gathering varying perceptions and viewpoints; 2) presenting and interpreting facts; 3) initiating discussions between antagonists; 4) identifying resources that might influence a positive outcome; and 5) making suggestions and offering alternatives.

Help could also come as mediation. Unlike conciliation, this formal process is tried only if the parties agree to it. In mediation, agency mediators, the most experienced staff members, undertake predetermined actions to get the disputants to the negotiation table. The mediators chair the negotiations, always trying to move the parties toward a clear and durable settlement.

One objective of mediation is a written agreement setting forth specific steps each side agrees to take to end the problem. Another is to create a self-enforcing mechanism to assure timely implementation of its provisions.

Inherent in both services is the technical assistance that CRS professionals provide. It can range from conducting training in dispute resolution and crisis management to providing resource materials and program tools and models indicating how other agencies or communities dealt effectively with similar problems.

### Who Was Helped and How

CRS' racial and ethnic dispute settlement assistance was utilized by public and private agencies and organizations in numerous ways during the year.

Federal district judges called on the agency to mediate, as an alternative to litigation, affirmative action and race discrimination suits; suits brought by prison inmates' groups alleging denial of civil rights; and to help implement school desegregation orders and to provide information on community receptivity.

Prison administrators utilized staff members to mediate inmates' civil rights grievances before they resulted into court suits, to help restore order during an outbreak, and to train guards and administrators in conflict management.

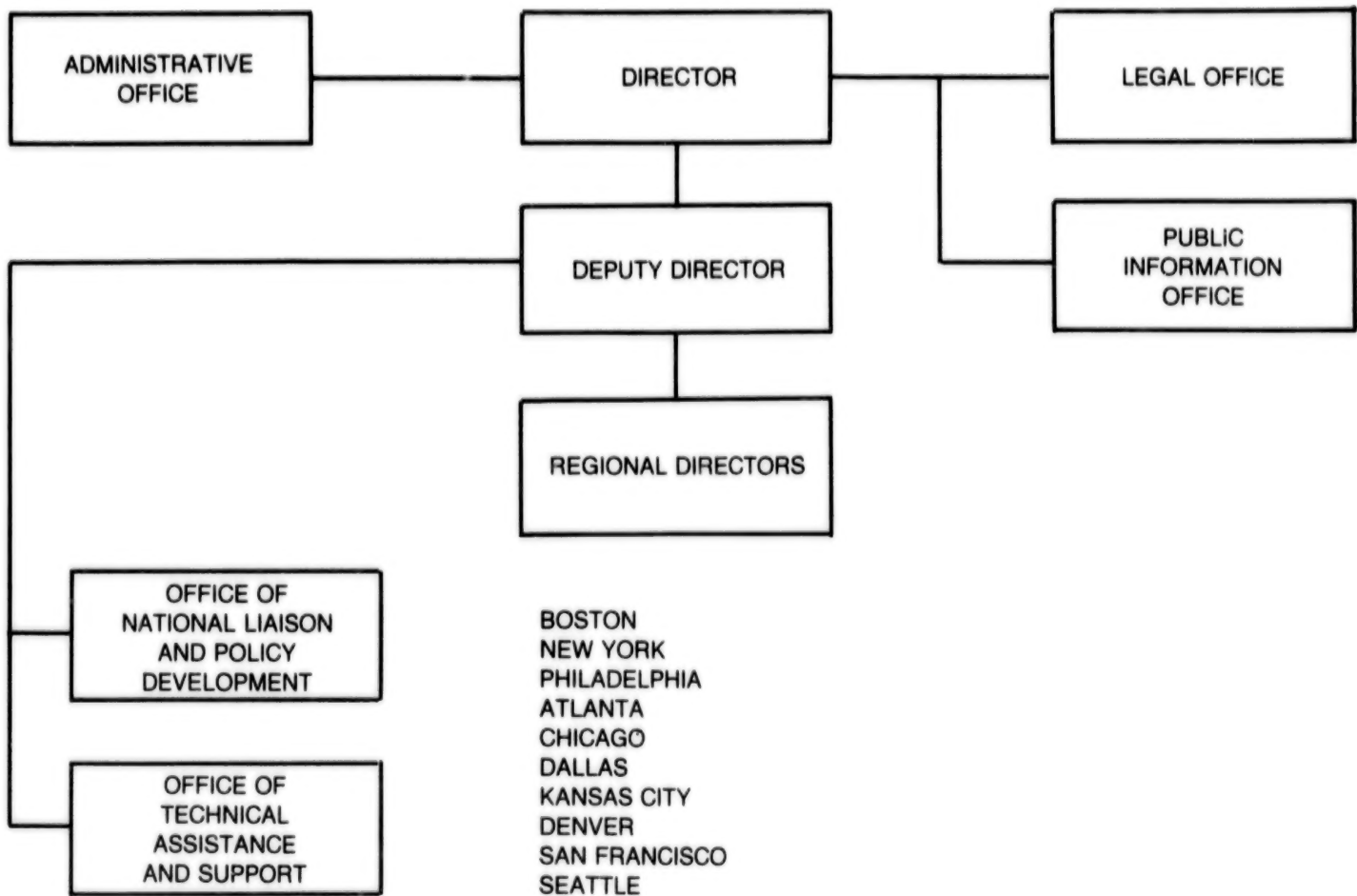
Private agencies and community groups called on the agency to conciliate or mediate a host of problems stemming from allegations of racial and ethnic discrimination.

Law enforcement agencies called on CRS to mediate disputes with minority groups, train officers in conflict management and human relations, review recruitment and upgrading programs, help establish guidelines on the use of firearms, establish or evaluate police/community relations programs, and to identify models of effective citizen participation in law enforcement activities.

The agency responded to calls from school officials to: mediate disputes with parents' organizations; train school security personnel, teachers, and other relevant personnel in preparation for school desegregation; provide technical assistance in support of planning and implementing the desegregation process; and design plans and programs to improve school-parental relationships.

Business and industry leaders and federal, state, and local officials also requested and received agency help on a number of problems. The assistance included settling disputes

### Community Relations Service



occurring in the workplace, which had the potential for violence or for halting or impeding business operations, providing training for relevant officials, and conciliating disputes with minorities concerning the implementation of various public programs.

In performing its tasks, the agency's ultimate aim is to bring about rapid and orderly progress towards securing a life of justice, equal opportunity, and human dignity for all American citizens.

CRS' basic resource is its personnel who are experienced in racial and ethnic conflict resolution. The triracial, bilingual staff works individually or in teams, but always as objective third-party neutrals.

The goal is to help local communities to resolve their problems in an equitable manner. There is no direct cost to communities for CRS services.

CRS had 104 permanent employees at the end of the fiscal year.

### CRS Structure

CRS is structured for immediate response to racial and ethnic problems in the most cost-effective way. There are 10 regional offices, an Office of Technical Assistance and Support, a Public Information Office, Legal Office, Office of National Liaison and Policy Development, and Administrative Office.

Regional offices provide on-the-scene, day-to-day help on problems that arise from charges of racial and ethnic discrimination. Virtually all casework is done by mediators and conciliators from these offices.

The Office of Technical Assistance and Support helps the regional offices on all specialized casework. Specialists in education, administration of justice, and technical writing advise and assist regional staff members who are generalists. The office also arranges for the use of consultants and develops materials to meet conciliation and mediation needs.

The Office of National Liaison and Policy Development monitors national trends in racial/ethnic relations, evaluates



programs for efficiency and effectiveness, and proposes planning and policy guidelines based on evaluations and trends ascertained. The office maintains liaison with major national organizations to aid in the development of agency programs, and also elicits outside resources to help CRS in its work.

The Public Information Office handles inquiries from the news media and private citizens, advises field staff on media-related aspects of conciliation and mediation, and advises the Director on the public affairs implications of new programs and policies. This office develops a variety of the written materials needed by the Director and prepares a number of regular and special-purpose reports, including the CRS annual report. It is also responsible for the agency's Congressional Information Program, which provides case-related information requested by members of Congress.

The Administrative Office provides logistical support with respect to space and equipment requirements, budget, procurement, and personnel matters.

The Legal Office's primary responsibility is to serve as the legal advisor to the Director and agency staff.

## **Fiscal 1981 Caseload (abbreviated)**

Racial and ethnic problems that CRS encounters are catalogued as: 1) administration of justice—or those involving law enforcement and penal institutions; 2) education; and 3) general community relations. The latter category includes a broad range of difficulties in employment, health and welfare services, transportation, activities of the Ku Klux Klan, American Nazi Party, and similar groups, and problems related to the influx of Cubans, Haitians, and Indo-Chinese.

The agency's systematic approach to problem resolution begins when an alert to a racial or ethnic conflict or potential conflict is received from a public official or community group—or from a CRS professional with firsthand knowledge. During the year, 1,548 such alerts were received, a 10.3 percent increase over the previous year. Of these alerts, 625 were related to administration of justice, and 691 were general community relations problems—increases of 14.2 percent and 13.7 percent, respectively. Education alerts totaled 232, a decrease of 6.8 percent.

Once an alert is received, an assessment is conducted either by telephone or in person. The facts are analyzed on the basis of the history of the problems, the potential for escalation of tension or for violence, and whether CRS assistance can help solve the problems. If a decision is made to respond, the problem is designated as a case to be resolved through either conciliation or mediation.

CRS worked on 1,022 cases during fiscal 1981. Of this number, 448 were general community relations problems and 402 were administration of justice problems, increases of 20

percent and 11 percent, respectively. Education cases declined 9.9 percent, down to 172 from 191 the previous year.

Specific issues in general community relations were diverse. In some instances, problems cropped up as immigrants or illegal aliens from Cuba, Indo-China, and Haiti often found themselves at odds with local citizens. Their sometimes sudden arrival on the local scene created community instability. Invariably, there was insufficient preparation made for the influx. Tensions soared as unfamiliar cultures were thrust upon one another, with little understanding of the values, language, or customs of the other. Assimilation problems became intense in numerous instances where local citizen groups perceived the newcomers to be a threat to their safety, livelihood or homogeneity. Violence and threats of violence were not uncommon.

CRS' role varied somewhat in each circumstance.

The CRS response in Minneapolis/St. Paul, Providence, New Orleans, Kansas City, Denver, San Jose, and numerous other communities was keyed to alleviating tensions and averting potential violence stemming from competition of Indo-Chinese refugees and blacks and Hispanics over limited housing, jobs, and social services.

The CRS response in Biloxi, Panama City, as well as in Seabrook, Kemah, Rockport, and Santa Fe/Galveston Bay, Texas was keyed to reducing violence or its potential between white and Indo-Chinese refugee fishermen, each competing for a livelihood in over-fished waters. The approach in all instances stressed the need for local solutions to local problems, arrived at through improved communications by all involved and responsible.

To alleviate threatened violence along Texas' gulf coast, for example, CRS recommended that representatives of state agencies visit troubled fishing communities to assure economic equity and even-handed prosecution of those who threatened or committed acts of violence or violated regulations. A CRS conciliator solicited the cooperation of the Coast Guard and the State Department of Parks and Wildlife in a boat inspection program, in addition to working with officials of local gulf coast communities in developing and implementing programs to forestall violence.

Also contributing to this category was a number of cases related to the Ku Klux Klan, American Nazi Party, and similar groups. Acts of intrusion, intimidation, harassment, and violence affected every geographic area of the nation—from California to Washington and Oregon, then across the country to New York and Maine, then down to Florida, Louisiana and Texas.

CRS also: conciliated between groups during protests and demonstrations; assisted organizations to form coalitions to help harassed victims; and helped local and state governments to better address acts of intimidation by forming victim support systems. For example, in West Virginia, CRS helped

the governor to develop a Civil Tension Task Force. In Washington and Oregon, the agency worked closely with officials to develop more effective legislative sanctions against racial intimidation.

CRS gave diverse help to school systems during the year. Where schools were undergoing some phase of desegregation, aid included: 1) advising school officials, police, and others on contingency planning; 2) conducting human relations and conflict management training for teachers and other school personnel; 3) providing assistance to federal courts; 4) reviewing school disciplinary practices; 5) advising on the human relations aspects of proposed school programs.

CRS helps resolve such school issues as alleged discriminatory discipline, unfair hiring practices, and such "second generation" desegregation problems as ability grouping and little minority involvement in curriculum development and extracurricular activities. The agency's aim is to provide conciliation assistance in critical situations, and establish ways to detect potential problems and resolve them before they become critical.

Some of the school systems receiving CRS assistance were Boston; Philadelphia; Greensport, New York; Braddock, Pennsylvania; Lafayette, Georgia; Chicago; Austin; St. Louis; Englewood, Colorado; Dunseith, North Dakota; Los Angeles; and Fairbanks, Alaska.

Problems in law enforcement centered on allegations of excessive use of force and police/community relations: 1) the question of when and under what circumstances officers should use the weapon in their duties; 2) day-to-day stress over charges of inadequate police services, unfair recruitment practices, and verbal abuse; and 3) countercharges of lack of community support and cooperation.

As in past years, the agency approached the problems in a number of ways.

In Texas, the agency staff obtained the participation of the executives of the major law enforcement agencies in a collaborative effort to develop model guidelines by which local police jurisdictions could equitably process citizens complaints. Upon completion of the model, CRS will assist the Steering Committee of the group in developing regional programs to encourage its adoption in local jurisdictions. Improper handling of citizens complaints has been found to be a major factor impeding police/minority cooperation against crime.

In Massachusetts, at the request of the Criminal Justice Training Council, the agency developed and conducted a three-day training conference for 130 police chiefs and law enforcement officers from throughout the state on the use of deadly force.

In New Orleans, CRS conciliated racial tension that grew to serious proportions in November 1980, when a white policeman was killed and four blacks were killed by the police within a five-day span. Conciliation by CRS reduced hostili-

ties to the level where reason could prevail and the legal process could begin.

CRS then helped form a loose coalition of black leaders and city officials to upgrade police/community relations by looking into police firearms policies and citizens complaints procedures and making the required adjustments.

Concerns surfaced that possible exoneration of the seven policemen charged with violating the deceased individuals' civil rights might spark a situation similar to the Miami rioting in 1980. CRS then recommended development of a coalition of religious, business and civil leaders, and public officials to work as a group to develop contingency plans for responding to potential trouble. The group feels its work was mainly responsible for the absence of trouble when the officers were exonerated on September 11, 1981.

Another way CRS addressed police/community problems during the year was through mediation.

For example, in November 1980, the agency initiated negotiations between representatives of the NAACP (National Association for the Advancement of Colored People) and Richmond, California, city officials, at the request of a federal judge. The court had ordered the city to integrate its police force in 1976, and to improve its process for handling citizens complaints against the police in 1980.

Four suits filed by the NAACP in the past three years named 41 people as brutality victims; 400 people rallied in front of city hall to protest police brutality in the summer of 1980.

#### Comparison of Workload Data for Fiscal Years 1980 and 1981

	FY 1980	FY 1981	Percent of Change
Alerts .....	1,404	1,548	+10.3
Assessments .....	1,077	1,219	+14.0
Conciliation Cases:			
Conducted .....	890	991	+11.3
Concluded .....	652	792	+21.5
Mediation Cases:			
Conducted .....	34	31	-8.8
Concluded .....	32	20	-9.1

Through CRS mediation efforts, in August of 1981, the parties reached an out-of-court settlement to three police brutality suits brought by the NAACP in 1980 on behalf of 27 Richmond residents. The agreement was issued as a consent decree the next month by the court. The agreement ranks Richmond's police department with other Bay Area law enforcement agencies that have taken steps toward easing strains caused when growing minority populations must rely on predominantly white police forces for protection. The parties agreed to take steps to assure that the racial composition of the police department reflects that of the city. During the past decade, the white population has declined and minorities now account for 70 percent of the city's 74,000 population.

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Blacks comprise 48 percent of this total. In the police force, however, whites constitute 68 percent of the 169 sworn officers.

While mediation was employed in Richmond to settle court suits already filed, the process was employed in Anchorage,

Alaska, at the city's request, to resolve issues and avoid suit. Within about 20 hours, representatives of the police department and minority community groups settled issues that had separated them for some time. Many other communities did likewise.



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## Foreign Claims Settlement Commission

**J. Raymond Bell**  
**Chairman**

The Foreign Claims Settlement Commission is a small, quasi-judicial federal agency authorized:

- to determine claims of U.S. nationals for loss of property in specific foreign countries as a result of nationalization or other taking by those governments.
- to determine claims of U.S. nationals and organizations in U.S. territories for damage and loss of property as a result of military operations during World War II.
- and to determine claims of U.S. military personnel and civilians held in a captured status in specified areas during World War II, the Korean conflict, and the Vietnam conflict.

The Commission was created by Reorganization Plan No. 1 of 1954 [68 Stat. 1279, 22 U.S. Code 1622 Note] which abolished the War Claims Commission and the International Claims Commission, and transferred their functions to the new Commission. This created one permanent independent federal agency with the staff and expertise to continue the consideration of claims as a result of armed conflicts and nationalization of property.

During 1980, the Commission was transferred by P.L. 96-209 [94 Stat. 96, approved March 14, 1980; 22 U.S. Code 1622a] to the Department of Justice as a separate agency. Under the statute, the Commission maintains its independence as an adjudicatory federal agency but receives certain administrative support services from the Department. On October 1, 1980, the transfer became effective.

The Commission consists of a full-time Chairman and two part-time Commissioners—all appointed by the President, and confirmed by the Senate. The Chairman and Commissioners are responsible for the review of claims and staff proposals and the issuance of decisions.

The awards made by the Commission for the expropriation of property by foreign governments and for wartime

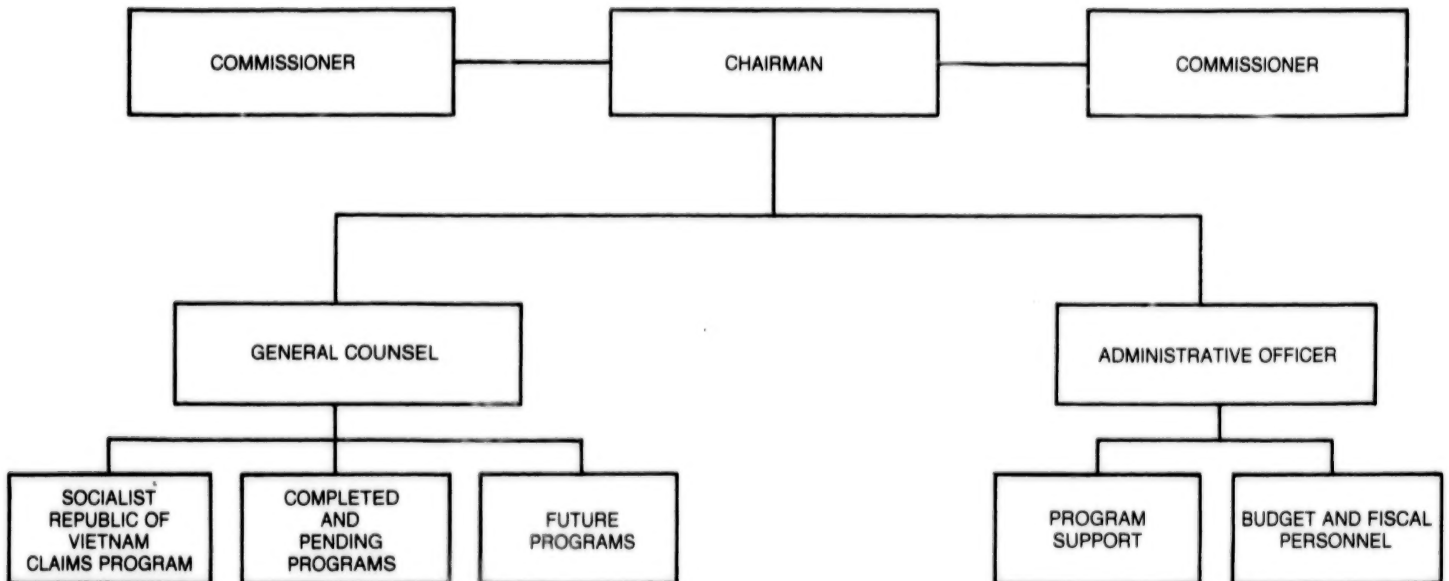
destruction are not paid by appropriated funds from the U.S. Treasury. Rather, the authorizing statutes provide for the payment of such awards from funds made available either as a result of the liquidation of foreign assets blocked in the United States or from claim settlement agreements negotiated with the foreign governments which have nationalized or otherwise taken property of U.S. nationals.

Commission operating expenses are only partially, if at all, borne by U.S. taxpayers. The statutes authorizing payments of awards also provide for the deduction of a certain percentage (usually five percent) of the funds resulting from the liquidation of vested assets or a claims settlement agreement for deposit in the Treasury as reimbursement to defray the administrative expenses of the Commission and the Department of the Treasury in implementing the various claims programs. As of the end of fiscal 1980, over \$29 million had been so returned to the Treasury, with additional amounts anticipated from the future settlement of claims already adjudicated by the Commission. The total administrative expenses of the Commission and its predecessors from the beginning of fiscal 1950 through 1980 amounted to approximately \$25.7 million.

During the period of this report, the Commission: Completed a four-year program to adjudicate claims of U.S. nationals against the German Democratic Republic; completed a second China Claims Program adjudicating claims which arose after November 1966; continued the adjudication of claims of Vietnam prisoners of war; and commenced a program to adjudicate claims against the Socialist Republic of Vietnam. Pending before Congress at the end of the reporting period was legislation to authorize adjudication of claims arising after August 8, 1958, against Czechoslovakia.

The Commission was consulted by Congress and the Executive Branch concerning legislation involving claims against Czechoslovakia and Iran, and responded to over 1,200 requests concerning past claims programs.

## Foreign Claims Settlement Commission



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## **INTERPOL—United States National Central Bureau**

**Richard C. Stiener**  
**Chief**

The INTERPOL—United States National Central Bureau (INTERPOL—USNCB) facilitates international law enforcement cooperation as the U.S. representative with the International Criminal Police Organization (INTERPOL) on behalf of the Attorney General—who maintains U.S. membership pursuant to 22 U.S. Code 263a. The INTERPOL—USNCB addresses the problems of international criminal activity and the movement of international criminals and terrorists across international borders that affect law enforcement capabilities in the United States and the 132 other member countries.

INTERPOL, formed in 1923 and reorganized in 1946, promotes mutual assistance among criminal police authorities—within the limits of the laws existing in the different countries and the INTERPOL Constitution, and in keeping with the spirit of the INTERPOL “Universal Declaration of Human Rights.”

Each member is required to maintain a National Central Bureau (NCB) within its boundaries, which operates under its own national laws. Each NCB ensures a central point of coordination with the law enforcement departments of that member country, as well as with the NCBs of the other member countries and with the General Secretariat.

The 133 countries are linked by a worldwide communications network with INTERPOL headquarters in St. Cloud, a Paris suburb. They utilize the support of a permanent administrative and technical organization—the General Secretariat.

The mission of INTERPOL—USNCB in the United States is to facilitate police matters and international law enforcement cooperation, and to develop efficient and effective means of communication among domestic and foreign law enforcement organizations to combat sophisticated and violent crimes that transcend national boundaries.

Three criteria must be fulfilled before information leaves the United States through INTERPOL—USNCB channels:

1. A crime has been committed in the country requesting the information, and the crime would be considered a violation of United States federal or state law.
2. The INTERPOL—USNCB is satisfied that there is a link between the crime and the individual about whom the information is requested.
3. The type of crime does not involve matters of a military, religious, racial, or political nature.

The INTERPOL—USNCB operates through well-established collaborative efforts with federal agencies, primarily within the Departments of Justice, Treasury, and State, and the Postal Service. The United States maintains its NCB as an integral part of the Department of Justice, which acts in conjunction with the Department of the Treasury in working toward the goals of the NCB. Pursuant to an agreement between the Departments of Justice and Treasury, the alternate U.S. representative to INTERPOL is the Secretary of the Treasury. According to the agreement of January 1977, as amended in May 1980, the two agencies provide staffing and professional law enforcement leadership for the position of Chief and Deputy Chief of the INTERPOL—USNCB, for two-year rotating terms. However, regardless of which agency's personnel are in office, INTERPOL—USNCB remains an official part of the Department of Justice and as such always represents the nation on behalf of the Attorney General.

The USNCB completed plans in fiscal 1981 to establish a direct telecommunications link between Washington and the General Secretariat in France by using Department of State telecommunications lines. This new system will reduce the transmission time from approximately three hours to a few seconds. This link will be operational early in fiscal 1982.

Requests for assistance include: investigations of murder, robbery, large-scale narcotics violations, large-scale fraud and counterfeiting; apprehension of international fugitives, and extraditions; criminal history information and license checks; humanitarian matters involving illness or death in the family, locating runaway children, or return of lost property.

The caseload handled by the INTERPOL—USNCB has increased by almost 30 percent per year from fiscal 1977 to fiscal 1980.

During fiscal 1980, the INTERPOL—USNCB received approximately 8,400 new investigative matters, and completed a total of about 6,900 cases investigated or information transmitted.

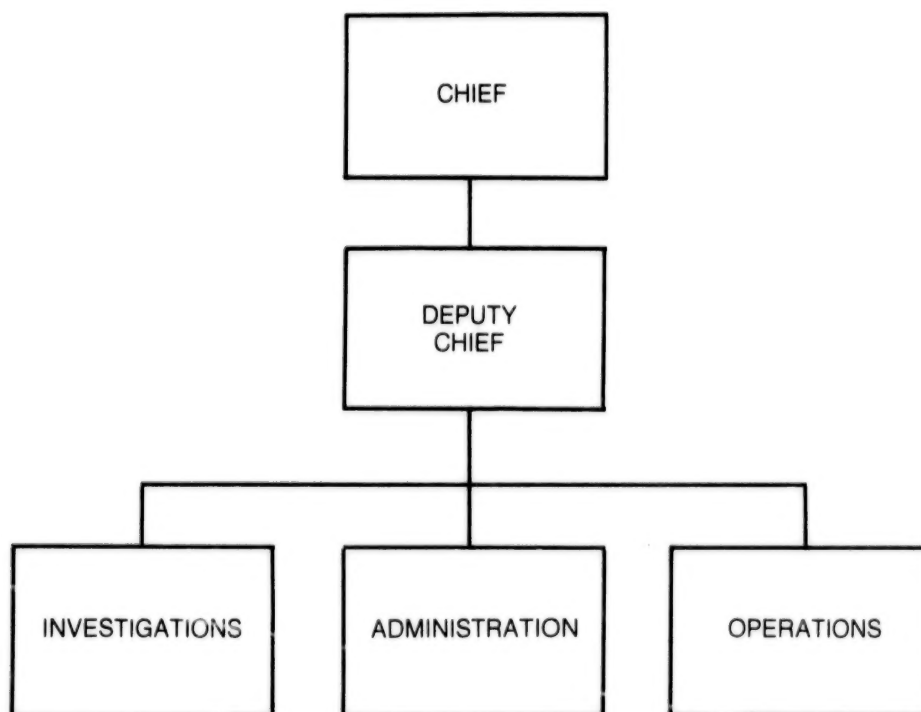
In fiscal 1981, the INTERPOL—USNCB received about 9,000 new investigative matters, and a total of about 6,700 cases were closed.

Approximately 5,000 of the pending cases each year represent wanted notices on fugitives or international criminals.

The U.S. Bureau's fiscal 1981 caseload of approximately 9,000 new cases included a total of over 11,000 offenses or



## INTERPOL-United States National Central Bureau



activity categories. Fraud and counterfeiting cases comprised approximately 19 percent; narcotics violations represented about 13 percent; theft cases made up 18 percent; violent crimes, firearms, and explosives violations comprised about 13 percent; international fugitives cases totaled about 5 percent; immigration violations amounted to about 2 percent; criminal history checks composed about 14 percent; and humanitarian, and miscellaneous criminal and noncriminal matters totaled 16 percent.

During fiscal 1981, there were approximately 1,700 international arrest cases handled through the U.S. Bureau. Of the 160 cases in which dispositions have been reported, 84 percent resulted in convictions or deportations.

Several special programs have recently been instituted by the USNCB, to focus attention on complex or emerging areas of international criminal activity.

In fiscal 1980 and 1981, the INTERPOL-USNCB, acting in conjunction with the Canadian NCB, instituted a stolen art works program. They distributed stolen art circulars with photographs and descriptive data and entered codified data as a part of the property portion of their computer data bases.

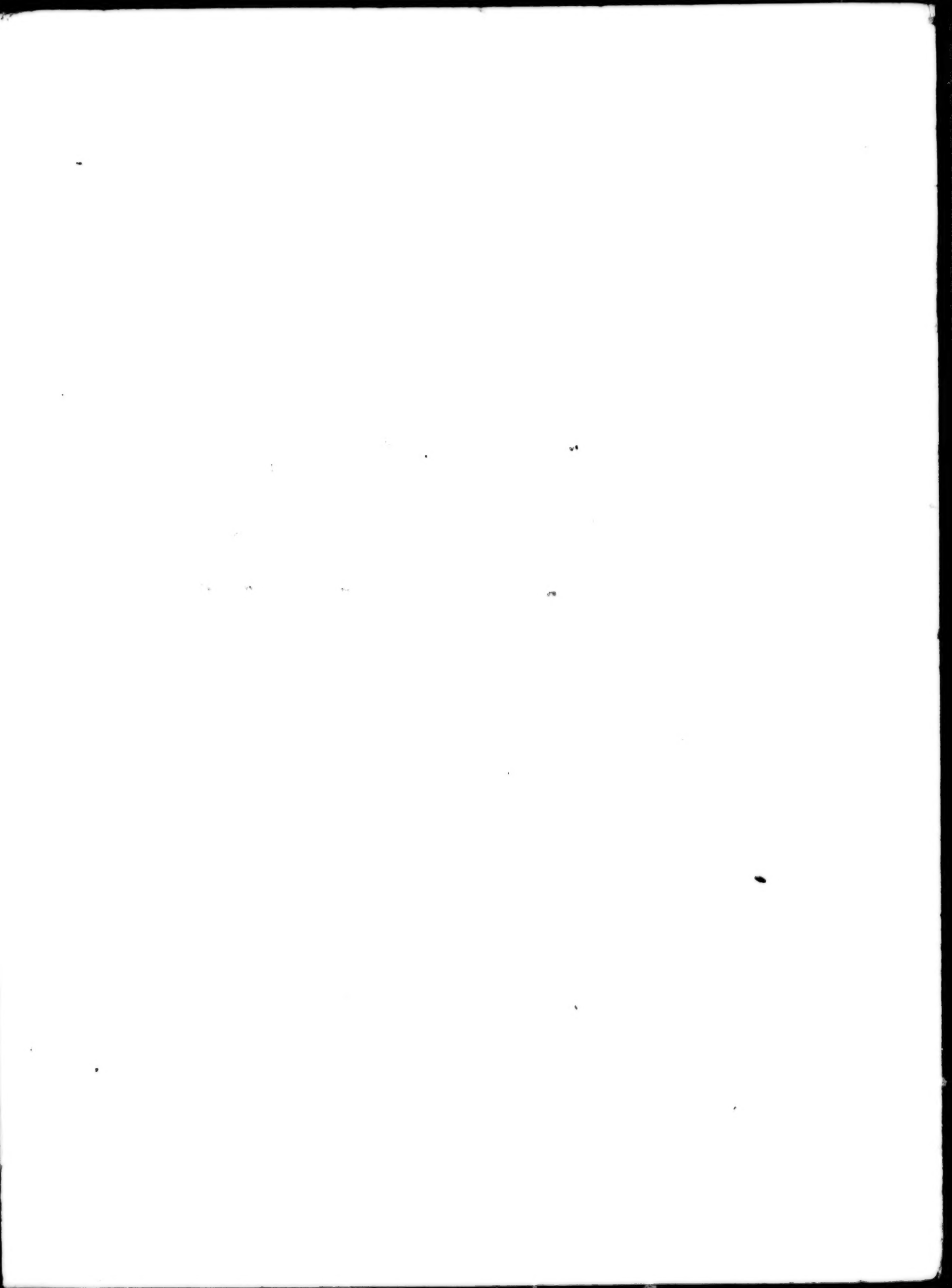
The INTERPOL-USNCB established a white-collar crime unit consisting of three senior caseworkers from those agencies with a direct interest in economic crime to coordinate and integrate information for fraud investigations of an international nature.

The INTERPOL General Secretariat develops specialized programs staffed with U.S. personnel in complex or emerging areas of international crime. One of the most highly successful units is the Drugs Subdivision, headed by a Drug Enforcement Administration agent and staffed by 21 persons from 20 countries which handled approximately 24,500 international illicit drug cases in each of fiscal 1978 and 1979, and approximately 28,500 drug violations cases in fiscal 1980.

In the latter part of fiscal 1981, the United States proposed to INTERPOL an aggressive program to coordinate investigations among member countries in these significant areas of international criminal activity:

1. Economic and financial crimes (including counterfeiting, currency violations, "laundering" money, other financial crimes, and general fraud).
2. Tracking international fugitives.
3. Crimes against persons and property.
4. Explosives and weapons trafficking.

The U.S. Bureau provides benefits to state and local law enforcement agencies in securing the assistance of foreign police. The greatest proportion of the caseload increases came from state and local law enforcement requests.



END

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